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# HEARING SENATE RULES COMMITTEE STATE OF CALIFORNIA



STATE CAPITOL ROOM 3191 SACRAMENTO, CALIFORNIA

MONDAY, AUGUST 22, 1994 10:40 A.M.

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25	Reported by:	
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27	Evelyn J. Mizak Shorthand Reporter	
28	Shorthand Reporter	

1	<u>APPEARANCES</u>
2	MEMBERS PRESENT
3	SENATOR WILLIAM LOCKYER, Chair
4	SENATOR WILLIAM CRAVEN, Vice Chair
5	SENATOR RUBEN AYALA
6	SENATOR ROBERT BEVERLY
7	SENATOR NICHOLAS PETRIS
8	STAFF PRESENT
9	CLIFF BERG, Executive Officer
10	PAT WEBB, Committee Secretary
11	RICK ROLLENS, Consultant on Bill Referrals
12	NANCY MICHEL, Consultant on Governor's Appointments
13	ALSO PRESENT
14 15	DONALD J. VALPREDO, Member California Horse Racing Board
16	SENATOR KEN MADDY
17	JACQUELINE E. SCHAFER, Chairperson State Air Resources Control Board
18 19	CARL D. PERRY, President and Chief Executive Officer U.S. Electricar International
20	JOHN R. TORRENS PG&E
21	JIM GREENE Southern California Gas
22	CECILE MARTIN, Deputy Director
23	California Electric Transportation Coalition
24 25	MICHAEL THOMAS California Trucking Association
26	TOMMY ROSS Southern California Edison
27 28	CINDY TUCK California Council for Environmental and Economic Balance California Grape and Tree Fruit League



1	<u>APPEARANCES (Continued)</u>
2	JOHN J. KENNEDY, Director of Advanced Application Allied Signal Aerospace
4	BILL NORTHROP, Executive Vice President Independent Oil Producers Agency
5	RICHARD VIND, Chair and Chief Executive Officer Regent International
7	NEIL KOCHLER, Partner Parallel Products
8	V. JOHN WHITE Sierra Club
10	TOM MARKIN, Director of California Governmental Organizations ARCO
11	EVELYN GIBSON California Independent Oil Marketers Association
13	LYNNE EDGERTON, Member State Air Resources Board
15	VICTORIA JONES Southern California Gas
16 17	GORIK HOSSEPIAN Allied Signal Aerospace
18	SPENCER FLOURNOY, Member California Regional Water Quality Control Board
19	North Coastal Region
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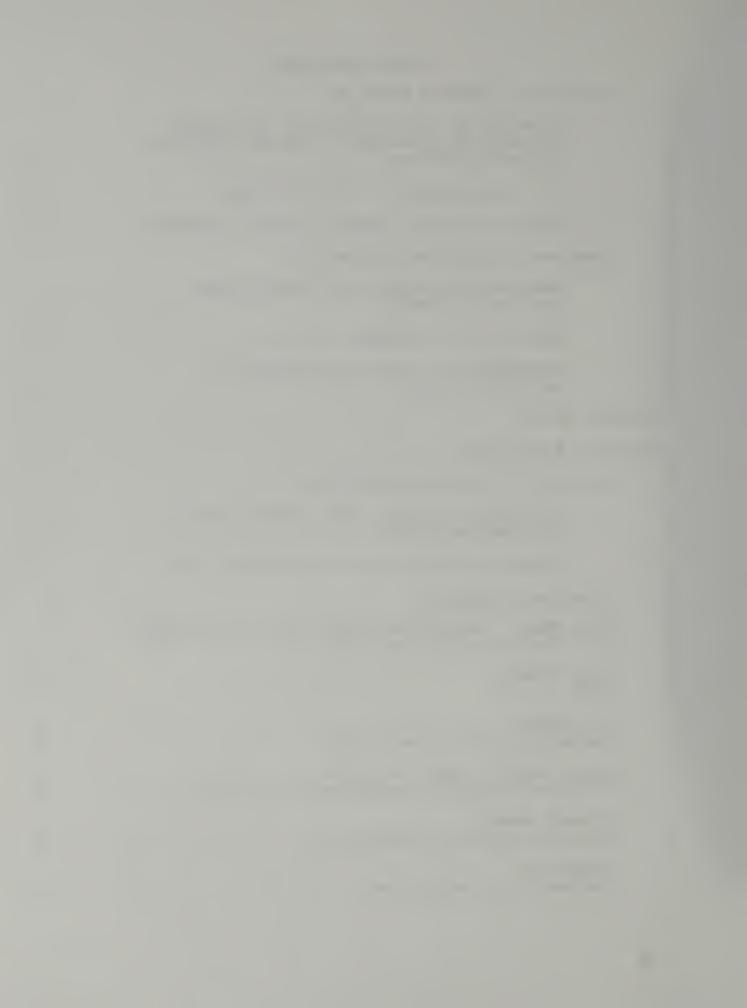
#### INDEX

2		Page
3	Proceedings	. 1
4	Governor's Appointees:	
5	DONALD J. VALPREDO, Member California Horse Racing Board	. 1
7	Statement in Support by SENATOR KEN MADDY	. 1
8	Background and Experience	. 2
9	Questions by SENATOR AYALA re:	
10	Use of Illegal Drugs in Horseracing Industry	. 2
11	Position on Satellite Wagering	. 3
12	Questions by CHAIRMAN LOCKYER re:	
13	Controversy Last Year regarding Use of Clenbuterol and Decision of Executive Secretary	. 3
14 15	Statement by CHAIRMAN LOCKYER of Committee's Intention regarding All Appointees	. 4
16	JACQUELINE E. SCHAFER, Chairperson State Air Resources Board	. 5
17	Background and Experience	. 5
18	Questions by CHAIRMAN LOCKYER re:	
19	State Actions in Response to the	0
20	Federal Implementation Plan	. 8
21	Federal Implementation Plan	. 10
22	Anticipated Response to Federal	1.0
23	Implementation Plan	. 12
24	Meeting Emissions Standard by Use of Alternative Methods	13
25	Differences in State's Initiatives and Enforcement Activities and those Contemplated	
26	in the Federal Implementation Plan	
27	Suggested Alternative to Shipping Emissions	16
28		



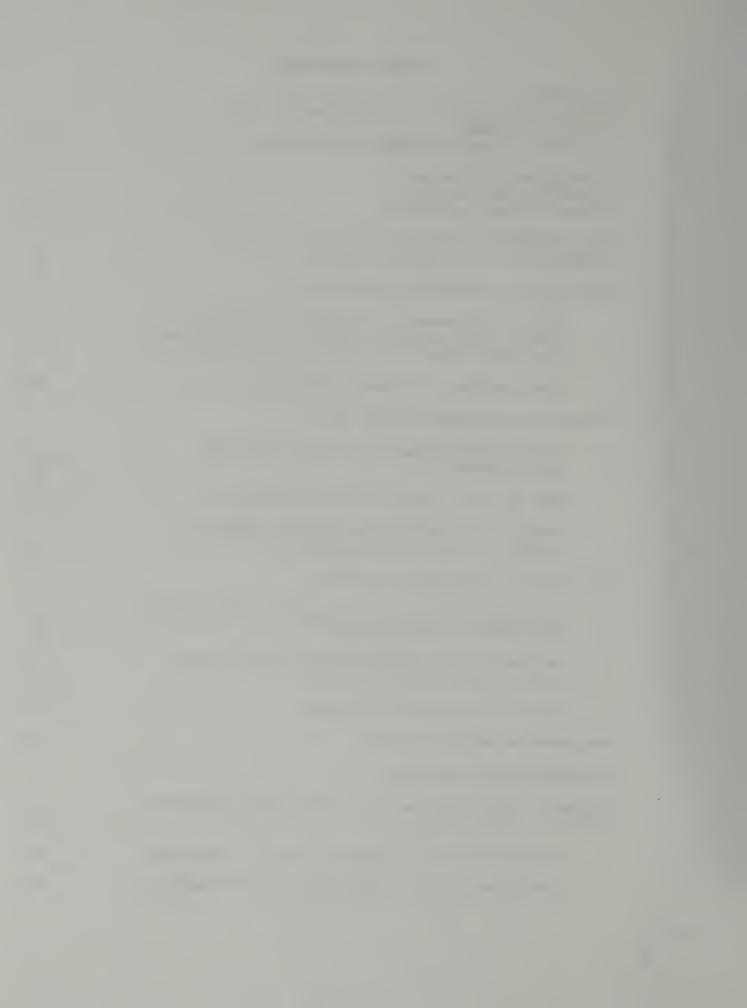
#### INDEX (Continued)

i		
2	Questions by SENATOR AYALA re:	
3	Proposals by Mayor Riordan of Los Angeles re: Pollution Controls in San Bernardino and Riverside Counties	17
5	ARB's Participation in Riordan Plan	18
6	Study on Economic Impact of Mayor's Proposal	19
7	Questions by CHAIRMAN LOCKYER re:	
8	Possible Controversy over Reformulated Gasoline Regulation	20
0	Extra Cost to Consumers	22
1	Contemplation of Actions to Reward or Penalize Refiners	22
2	Luncheon Recess	23
3	Afternoon Proceedings	24
4	Questions by CHAIRMAN LOCKYER re:	
5	Confrontation rather than Collaboration with Federal Efforts	24
7	Refusal to Participate in Workshops, etc	27
8	Witnesses in Support:	
9	CARL PERRY, President and Chief Executive Officer U.S. Electricar International	27
0	JOHN TORRENS PG&E	30
2	JIM GREENE Southern California Gas Company	32
3	CECILE MARTIN, Deputy Director California Electric Transportation Coalition	32
5	MICHAEL THOMAS California Trucking Association	33
6 7	TOMMY ROSS Southern California Edison	33



#### INDEX (Continued)

Į		
2	CINDY TUCK California Council for Environmental and	
3	Economic Balance California Grape and Tree Fruit League	. 3
4	JOHN KENNEDY, Director	
5	Advanced Applications Allied Signal Aerospace	. 3
6	BILL NORTHRUP, Executive Vice President	
7	Independent Oil Producers Agency	. 3
8	Questions by CHAIRMAN LOCKYER re:	
9	ARB's Involvement in Cal-EPA Joining in Lawsuit Challenging Federal Regulations on	
0	Fuel Additives	. 3
1	View on Mayor Riordan's Proposals	. 3
2	Questions by SENATOR AYALA re:	
3	Lack of Enforcement of Smoke Emission Truck Standards	. 4
4		
5	Health Risk Posed by Truck Emissions	. 4:
6	Lack of Even-Handedness in Treatment of Trucks vs. Passenger Vehicles	. 4
7	Questions by CHAIRMAN LOCKYER re:	
8	Domination of Economic Analysis over Health and Safety Focus at ARB	. 4
9	Accumulation and Centralization of Power	•
0	with Current Administration	. 4!
1	Lack of Substantive Results	. 40
2	Response by SENATOR CRAVEN	. 40
3	Witnesses in Opposition:	
4	RICHARD VIND, Chair and Chief Executive Officer Regent International	. 48
.5	Participation in Lawsuit with Oil Companies	. 49
6	Preliminary Draft Submitted to Oil Companies	. 49
7		



1	INDEX (Continued)	
2	ARB's Refusal to Comply with Public Records Act Request	5(
	Response by MS. SCHAFER	54
5	NEIL KOCHLER, Partner Parallel Products	56
6	ARB's Misleading Remarks about Ethanol Blends in Gasoline	51
8	Lack of Promised Fuel Neutrality	58
9	Questions by SENATOR CRAVEN re:	
10	Misunderstanding Nominee's Remarks	59
11	JOHN WHITE Sierra Club	63
12	Lack of Performance	63
13	Lack of Independence	65
14	Questions by SENATOR CRAVEN re:	
15	Technical Expertise at Sierra Club	66
16	Questions by SENATOR PETRIS re:	
17 18	Major Change of Direction in Policy at ARB	67
	Witnesses in Support:	
19 20	TOM MARKIN, Director California Governmental Organizations	
21	ARCO	69
22	Questions by SENATOR AYALA re:	
23	Letting Marketplace Determine which Additive Should be Used	71
24	Possible Health Risks	71
25	Statements by SENATOR PETRIS re:	
26	Industry's Comments on Marketplace	72
27	Industry's Consistent Denial of Health Risks	73



INDEX (Continued) 2 Questions by SENATOR PETRIS re: 3 Only Report from ARB on Use of Alternatives related to Use in Summer Months . . 75 **EVELYN GIBSON** California Independent Oil Marketers Associatoin . . . 75 6 Ouestions by SENATOR PETRIS re: Pesticides Source of Volatile Organic Compounds 76 8 Independent Monitoring of Most Hazardous 9 78 10 Which Department's Scientists Are Responsible for Monitoring Pesticide Emissions . . 80 11 Responsibilities of ARB and Department of 12 Pesticide Regulation and Local Districts . . . 81 13 Safequards against Political Intervention . . . . 82 14 Questions by CHAIRMAN LOCKYER re: 15 ARB's Action on VOCs from Pesticide Emissions 83 16 Ouestions by SENATOR PETRIS re: 17 Ultimate Control over Pesticide Emissions 84 18 Regulated Industry in Strong Support of 85 Nomination . . . . . 19 Statement by CHAIRMAN LOCKYER re: 20 Holding Confirmation under Submission . . . . . . 86 21 Plans to Take Testimony from Out of Town Nominees 22 and Witnesses . . . 86 23 LYNNE T. EDGERTON, Member State Air Resources Board 88 24 88 25 Questions by SENATOR AYALA re: 26 Mayor Riordan's Proposal . . . . . 91 27



### INDEX (Continued)

i i	
2	Witnesses in Support:
3	TOMMY ROSS Southern California Edison
5	VICTORIA JONES Southern California Gas
6 7	CECILE MARTIN California Electric Transportation Coalition 93
8	GORIK HOSSEPIAN Allied Signal Aerospace
9	Motion to Confirm
0	Committee Action
1 2	SPENCER FLOURNOY, Member California Regional Water Quality Control Board North Coast Region
3	Background and Experience
4	Questions by SENATOR AYALA re:
5	Experience as an Engineer
6	Competence in Water Quality Problems 96
7	Major Water Quality Issue Facing California 97
8	Need to Address Delta Issue
9	Statements by SENATOR CRAVEN re:
20	Schools Attended by Nominee
1	Questions by CHAIRMAN LOCKYER re:
22	Supervisor Carpenter's Negative Comments 100
23	Signs in Meeting Room
24	Questions by SENATOR AYALA re:
25	Geographical Extent of District Served 103
26	

27



1	INDEX (Continued)	
2	Questions by CHAIRMAN LOCKYER re:	
3	Appropriateness of Appointment for Water	•
4		0.
5		04
6		0:
7		0.5
8	Certificate of Reporter	06
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		

. 28



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CHAIRMAN LOCKYER: Senator Maddy, you wanted to take up what is item number seven for us; under appointees, number two.

SENATOR MADDY: Mr. Valpredo, yes, Mr. Chairman and Members.

Mr. Valpredo has served a term on the California

Horse Racing Board a long time. He's a personal friend of mine
as well as an avid person involved in horseracing as a breeder
and owner, one of the few on the Horse Racing Board today that
is and has been involved in all aspects of the industry. He's
past chairman of the California Thoroughbred Breeders
Association.

I think he's demonstrated the four years that I have observed his actions on the Horse Racing Board as being extremely objective, one trying to do reforms where reform is needed, and has been, I think, in all respects by all persons who observed from all aspects of the industry an excellent Board member.

So, I would ask that you strongly consider the fact of confirming him at this point.

CHAIRMAN LOCKYER: Thank you.

Mr. Valpredo, if you'll push the button there in front of you. You might want to start with any general comments, if you would.

MR. VALPREDO: Good morning, Mr. Chairman, Members of the Committee.



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I'm Donald Valpredo, resident of Bakersfield,

California. I'm in the farming business. My family has been involved in racing and raising thoroughbred horses longer than I can remember.

I have, as Senator Maddy said, served for 23 years as a director of the California Thoroughbred Breeders Association.

I'm a member of other thoroughbred organizations in the state and also nationally, a member of the Jockey Club.

I have served for four years now on the California

Horse Racing Board. I'm currently Vice Chairman of that Board,
and have served on various committees.

I'd be very happy to answer any questions you may have.

CHAIRMAN LOCKYER: Well, let me ask if there are questions yet from Members. Senator Ayala.

SENATOR AYALA: First of all, Mr. Valpredo, I'm not an expert on horseracing, but I keep reading about the illegal use of drugs as it pertains to horses.

What problem does the racing industry have with illegal drugs on horses?

MR. VALPREDO: Well, Senator, I don't think we're any different than any other sporting event. There's always the potential for the use of illegal drugs.

We monitor that very closely. We have constant surveillance of the drug testing of winners and other horses that are -- other competing horses in the races. We do that randomly.

We have been -- I think California's in the forefront



of leading that issue, and we have become a role model for other states. I'm very proud of the record that California has.

SENATOR AYALA: It's not out of control. It's there, but you think you've got it pretty well under control?

MR. VALPREDO: Yes, sir.

SENATOR AYALA: Do you favor the issue of satellite wagering?

MR. VALPREDO: I currently serve on the Racing Board's committee, and that's a very tough issue. We are monitoring what the revenues by satellite wagering, how they return revenues to the state, to the associations, and to the horsemen.

Satellite wagering seems to be coming -- the way that this industry is going. Yes, I favor satellite wagering, but it has to be monitored very closely.

SENATOR AYALA: That's all I have for now,
Mr. Chairman.

CHAIRMAN LOCKYER: Thank you, Senator.

Well, I guess, going back to be a bit more specific, there was the controversy last year regarding several horses, and the suggestion that Clenbuterol had been used. And I guess the executive secretary made a decision to dismiss the matter, which according to the subsequent Attorney General's report and investigation, numerous Board members thought that the secretary had acted inappropriately.

Can you help us understand what the dispute was about, and what you own views are about the matter?

MR. VALPREDO: Yes, Senator.



That dispute was handled improperly from that fact that when there's any sort of a positive test that comes back, there's a split sample. The split samples were sent off without the proper notification of the trainers and owners of the -- of those animals. So, their chance for due process was then negated because those split samples were used.

It was poorly handled, and those are some of the things that we've corrected.

CHAIRMAN LOCKYER: Who was in error? Who made the mistake in the way they --

MR. VALPREDO: Well, the procedural error came down from the then-acting executive director.

CHAIRMAN LOCKYER: And that is with respect to the samples, or with respect to the investigation, or decision to not investigate?

MR. VALPREDO: Well, the procedural error of mishandling of the split samples led to the complete investigation that could have taken place.

CHAIRMAN LOCKYER: So, that wiped it out, in effect?
MR. VALPREDO: Yes, sir.

CHAIRMAN LOCKYER: Are there other questions?

What I've recommended to Members, just so you'll be aware, is that we take testimony today on all of the various appointees, take them under submission. Probably some we'll take up before the Legislature adjourns for the year; others don't need to be acted on until December or later, so we'll have plenty of time to return to the issues.

Is there anyone present that wishes to make any



1 comment on the nomination of Mr. Valpredo? 2 I think that's all we want to hear at this point. 3 Thank you, sir, for your willingness to visit with us. 4 MR. VALPREDO: Thank you, Mr. Chairman, Members of 5 the Committee. 6 [Thereupon the Senate Rules 7 Committee acted upon legislative 8 agenda items.] CHAIRMAN LOCKYER: Jacqueline Schafer. 10 My thought about the schedule is, we probably have 11 sufficient time to do one, break, and then come back at 1:30. 12 So, in terms of managing your time, if anyone is present, I 13 would recommend, unless you have an interest in --14 SENATOR AYALA: Mr. Chairman, is it your wish that we 15 just hear the appointees, and not take action on them today? 16 CHAIRMAN LOCKYER: Yes, that would be my thought for 17 today, is that we just take testimony. We ask for comment, and 18 take the matters under submission until later in the week. 19 SENATOR AYALA: At some later day just for a vote 20 only. 21 CHAIRMAN LOCKYER: Probably, unless there's some new 22 startling information we learn. I would think that would make 23 sense, yes. 24 All right. 25 MS. SCHAFER: Thank you very much, Mr. Chairman and

I'm honored to be here today as Governor Wilson's nominee to Chair the California Air Resources Board.

distinguished Members of the Senate Rules Committee.

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I'd like to begin by reviewing for you briefly my prior experience in environmental policy and management for your consideration, and then move on to some of the goals that I have at the Air Resources Board.

My career reflects broad experience with environmental issues relating to: federal environmental legislation; military base closure and clean up, including installations here in California; and administration of environmental regulations as a Regional Administrator for the U.S. Environmental Protection Agency. As Chairwoman-designee, I have sought to foster the excellent technical and scientific work that has been the tradition of the Air Resources Board, while applying the lessons I've learned throughout my career on managing the controversial issues that the ARB has faced in the months since the Governor appointed me to the Board.

For example, the Board recently reviewed its 1990 mandate for the commercial development of zero-emission vehicles and the implementation of reformulated gasoline, all with the intent of addressing some of the greatest air quality challenges in the nation.

Prior to joining the Air Resources Board, I was appointed to be the first Assistant Secretary for the Navy for Installations and Environment, where I was responsible for policy and oversight for Navy and Marine Corps installations, environmental protection and restoration, safety and occupational health, and shore resources management.

I'm very proud of my work at the Pentagon, which included establishing an alternative fuels program for



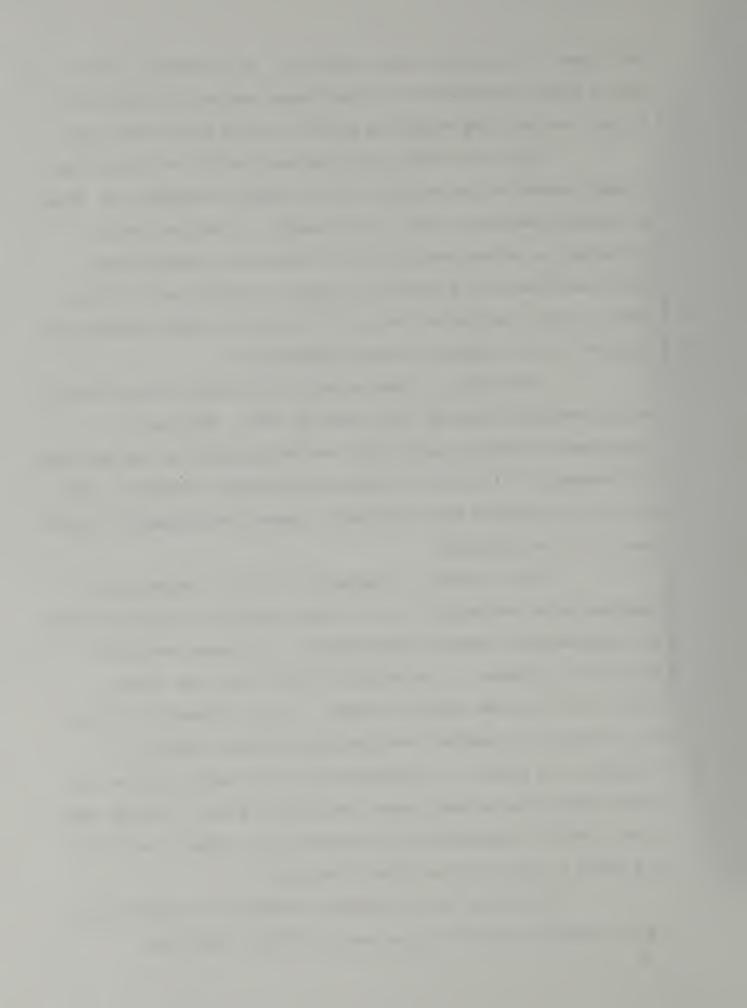
Department of the Navy fleet vehicles. As a result of this, the Navy's Public Works Center in San Diego opened the military's largest natural gas refueling station in the world last year.

This experience with the Navy and Marine Corps has already proved to be valuable in my current assignment as Chair of the Air Resources Board. For example, this year we've sponsored an effort jointly with Assemblymen Cannella and McPherson that will preserve air quality credits at military bases so that California can get on with its finding prosperous re-uses for its closing military facilities.

Previously, I have served on the White House Council on Environmental Quality from 1984 to 1989. This is a three-member advisory panel that was established by the National Environmental Policy Act to draft guidelines to carry out the Act, and to produce the President's annual Environmental Policy Report to the Congress.

Prior to that, I served as the U.S. EPA Regional
Administrator for Region II. In that position I was responsible
for implementing federal environmental regulatory and grant
assistance programs in the states of New York, New Jersey,
Puerto Rico and the Virgin Islands. I also worked for a total
of 11 years as a staffer with the United States Senate,
including six years as a professional staff member to the U.S.
Senate Committee on Environment and Public Works. During that
time, I worked extensively on environmental issues, including
the Clean Air Act and the Clean Water Act.

Part of my role as Chair of the Air Resources Board is to make sure we don't lose touch with the regulated



community, both industry and individuals. We need not only to encourage the most forward-looking technology to control air pollution, but also to understand their practical impacts on those who are affected by our regulations. To make great strides environmentally, as we have in the past, we must help to rebuild California's economy so that it can support industry in making the investments in innovative environmental technology for which our state is already so well noted.

In closing, I'd like to say that I have a strong appreciation of the relationship between a healthy environment and a sound economy. We have a lot of work to do in both areas, and we can only do it by recognizing that environmental and economic goals must work in tandem. The status quo isn't going to clean up the air. We also need to harness market forces to achieve our goals in the future, and we are beginning to explore effective ways to accomplish this.

California has set high standards for itself and has been bold in leading the nation in environmental improvement. I am committed to continuing that tradition.

I appreciate the attention of the Committee this morning.

CHAIRMAN LOCKYER: Thank you very much. Thank you for your introduction.

I'd like to have you comment for a moment on the FIP, and what actions you would anticipate from the state in response to the deadlines that are running.

MS. SCHAFER: The FIP is the Federal Implementation Plan. It is a leftover requirement from the 1987 -- the 1977,



excuse me, Clean Air Act.

When the 1990 Act amendments were adopted by the Congress, there was some expectation that the FIP requirement -- that is, the federal intervention in planning in California -- would be removed. However, under a court order in the Ninth Circuit in San Francisco, the interpretation was that EPA had to proceed with the FIP. EPA really did not want to do that, but under court order agreed to a deadline of February 14, 1994 to prepare the Federal Implementation Plan, and that would become final in February, 1995.

At the same time, the Federal Clean Air Act requires California, as it does all other states which have areas that are not in full attainment with the air quality standards, to prepare a State Implementation Plan. Unfortunately, having to proceed with two plans simultaneously, both of which are intended to achieve very aggressive emission reductions, has required duplication of effort and created some confusion among our regulated community.

What the state is trying to do, and what we have done in the past, is to make sure that we have the strongest, most forward-looking, technology forcing programs on the books that will allow us to reduce emission in a cost effective manner.

It's important to note that underlying the federal rules are their rule that the State of California has adopted over many years: our low emission or zero emission vehicle program, and our reformulated gasoline program.

EPA's comment period ends on August 21. We have, for our part, been developing, through a series of symposia,



innovative and alternative control technologies that we might also include in our State Implementation Plan, which must be submitted to EPA later this year. We are working prodigiously with the local districts, because our planning process in California builds from the bottom-up. The local districts develop plans, and we have been working in cooperation with them to develop emissions inventories, modeling information, and they will take the first step in proposing the local air quality management plans for us to review. We will continue to be engaged in this process between now and the end of the year. It is highest priority at the California Air Resources Board, to complete our State Implementation Plan in a timely manner, and make a presentation to EPA that will satisfy the requirements of federal law.

CHAIRMAN LOCKYER: You mean by a week from Wednesday?

MS. SCHAFER: No. The deadline for the State

Implementation Plan is November 15, and there is an 18-month

period after that to make additional demonstrations.

CHAIRMAN LOCKYER: With respect to the FIP requirement, the feds' comment period ends at the end of the month?

MS. SCHAFER: Yes, the federal comment period before the plan they introduced in February.

CHAIRMAN LOCKYER: Are you contemplating some -MS. SCHAFER: We will be making comments on the
federal plan; however, our first responsibility, and EPA has
acknowledged this as well, is for us to move ahead in an
expeditious manner to develop the State Implementation Plan,



1 because the expectation is that the state plan is the one that 2 will prevail at the end of the day. 3 CHAIRMAN LOCKYER: It certainly will if you get it 4 done. Absolutely, and if we do it right. 5 MS. SCHAFER: 6 That's very important also. 7 CHAIRMAN LOCKYER: So, it would be your thought that 8 it's unnecessary to respond in this cycle to FIP defects? 9 MS. SCHAFER: We would expect --CHAIRMAN LOCKYER: That is, you have until the end of 10 the month to comment on the FIP. We're not doing that? 11 12 MS. SCHAFER: We will be commenting on it. However, the notion of coming up with a state plan is one that we have 13 several more months for, and we are working very hard with the 14 15 local districts to do that. Our goal is --In February? 16 CHAIRMAN LOCKYER: 17 MS. SCHAFER: The statutory deadline is November 15, plus there is a period of 18 months after that to make 18 19 additional demonstrations of completeness, and things like that. 20 CHAIRMAN LOCKYER: But so far, there is no state 21 response or critique of the FIP? 22 MS. SCHAFER: The concentration that I have been making is to develop a State Implementation Plan. 23 24 Keep in mind that the federal plan has as its basis, 25 as its foundation, emissions reductions that are the result of 26 the California regulatory program, and has been for many, many These are additional measures that the EPA has proposed 27

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in order to reach attainment.



We are developing regulations. We are working with the community that is to be regulated from the bottom-up to come up with things that are practical for California and that will lead to genuine reductions in emissions in the areas that are not yet in attainment.

CHAIRMAN LOCKYER: I'm sorry, but that seemed to be a nonanswer.

I'm trying to understand, is there a response anticipated by the end of the month to defects in the FIP?

MS. SCHAFER: We will have comments on the FIP. We will point out where we think that the FIP is impractical for implementation in California.

But the constructive response that we are expected to make under the Clean Air Act is to develop our own State

Implementation Plan, which is due at the end of this year.

CHAIRMAN LOCKYER: Right, and can you anticipate what the criticisms will be? I assume there'll be some written communication that will go to the federal government, pointing out defects in the FIP?

MS. SCHAFER: Let me give you some examples.

The Federal Implementation Plan addresses sources that have not been traditionally as heavily controlled as other sources. We have done an enormous amount in light duty vehicles, for example, and the fuels that are used in those emissions. We have done -- in those vehicles. We have done an enormous amount for stationary sources in California.

There are some sources that we are -- it would be a stretch to achieve technologically, but we are working with the



regulated community to find out exactly, and with engine manufacturers, to find out exactly what would work best.

Right now, EPA's Federal Implementation Plan suggests that a standard of 1.5 grams of NOx per brake horse power hour is beyond is the capability of the technology to achieve in the time frame required. It would require alternative fuels, such as natural gas, to accomplish, and it would exclude the use of diesel fuel in heavy duty engines and in off-road applications such as construction and farm equipment.

We're very concerned that it's not practical. And one of the reasons we're concerned is that if the users of those engines do not meet the standards in the time that EPA requires, a penalty will be imposed, a fee will be imposed, and that would add up their cost of doing business, will put them at a competitive disadvantage with other states, and will not help California's economic recovery. In fact, it will probably end it sooner than later.

What we're looking at with the engine manufacturing organizations is how well we can do using diesel in our -- in the machinery that we need to use in California, where we have the infrastructure and the ability to service these engines. And we expect that we will be establishing a range of regulations, and we'll be working with the U.S. EPA, since they have considerable authority under the Clean Air Act, which is, the states are pre-empted from adopting regulations that will meet these standards through a federal mandate.

We expect that we should be able to continue to use diesel-powered engines here in California, even though they will



be cleaner than anyone has ever attempted to make them before. It's a stretch. It is technology forcing; however, we think we can do it, working with the industry and the regulated community.

CHAIRMAN LOCKYER: It's your view that the emissions standard expected to be met can be obtained in alternative ways?

MS. SCHAFER: We certainly have a big job in California, both the FIP and the SIP both have to achieve enormous reductions in emissions in order to meet the federally mandated deadlines. There's no question about that.

The question is how we go about doing that, and I think that the Air Board has a long tradition of pushing, mandating technology that is practical to achieve but that really pushes beyond the edge of what we have been able to accomplish easily in the past. We intend to continue that focus, and I think that we will be successful in demonstrating our ability to attain the national standards in the time frame required.

CHAIRMAN LOCKYER: How would you sketch the likely means to obtain, meet, those standards?

MS. SCHAFER: As I mentioned, the imposition of technology forcing regulations in sectors where we have not heretofore regulated.

CHAIRMAN LOCKYER: What would those be?

MS. SCHAFER: And that would be far-reaching NO<sup>x</sup> controls for heavy-duty engines, both on-road and off-road construction and off-road farm sources, for example.

We certainly expect that our low emission and zero



emission vehicle program will be successfully implemented over the years, and that this will bring about the reductions in emissions that we also expect.

And finally, in-use habits of people. We'd like to see much more turnover of older vehicles, get them off the road in connection with the smog check program that this Legislature worked with the Governor earlier this year to enact improvements in.

We think the combination of better controls over sources that have not historically been controlled, better controls over those which we have the best standards in the world for in terms fuels and engines, and in-use controls that will help us to make sure that we accelerate the introduction of the newest technologies into the fleets and continue on the downward slope that we have historically enjoyed here as a result of our clean fuels program, clean fuels and clean cars program.

CHAIRMAN LOCKYER: How would you think the initiatives and enforcement activities that you've described are different than those contemplated by the FIP?

MS. SCHAFER: As I mentioned before, the FIP is largely founded on a punitive program of emission fees. The standards are set for a variety of categories which are difficult to meet with any certainty in the time frame required. If those are not met, a series of fees is imposed on the industries, and we're afraid that that will merely have the effect of having people hang on to older equipment for a longer period of time, or, if they can operate outside of California,



we're afraid that they may move operations outside the state in order to escape standards which are imposed on California sources and not on other national sources with which they compete.

An example is the \$10,000 a ton emission charge for NOx on shipping that's brought in from Los Angeles and Long Beach Ports. That would certainly make it difficult for those people to continue in business at those locations, and they would, presumably, move to other ports, either to our north or south.

CHAIRMAN LOCKYER: I happen to agree, but what would be your alternative to, let's just say, shipping emissions that somehow is superior to the fee or more likely to cause changes of behavior?

MS. SCHAFER: We would like to see EPA adopt national standards where they have that authority so that all of these sources are treated equally, and that we would work with the local governments in adopting operational controls and requirements so that we will minimize the emissions while they were in the ports and areas that would adversely affect the air quality of the people in Southern California.

CHAIRMAN LOCKYER: Let me mention, and your staff may have already researched this, but Pasco, the steel manufacturing facility on the Carquinez Straits, was required by the Bay Area Air District to reduce NO<sup>X</sup> emissions rather substantially in order to dock in the Bay Area.

They found that things, like, they've retrofitted the ships, but separate from that, which was expensive, separate



from that, they've found that most of the problem comes from running the engines while they're at dock because they don't have alternative power sources, and on-pier electrical generation and so on seemed to be the solution that worked.

That seems to be an easy one to do in L.A. to avoid a lot of the fines and difficulties.

MS. SCHAFER: Going cold iron, as they say, with military ships is done, and of course, that actually saves money, too, so that there are alternatives.

And our job is to work with the regulated community and the local districts to find out the most practical solutions and include those in our State Implementation Plan. And I think we'll be successful in doing that.

CHAIRMAN LOCKYER: Senator Ayala.

SENATOR AYALA: I have a question or two.

Ms. Schafer, are you aware of the proposals made by the Los Angeles Mayor, Richard Riordan, to replace the pollution controls in urban Los Angeles with new controls in the inland areas, such as controls on dairy farms and dust from farming and construction? Are you aware of that proposal?

MS. SCHAFER: I'm aware that the City of Los Angeles has an alternative which was presented to the local air quality management board in Southern California last week. As a result of his presentation, and testimony of other people, it's clear that the South Coast wants to take another look at its own regulations.

With respect to the question that you're raising, I have the same answer as I did for the Chairman. There are some



proposals and some plans that are just not practical, and -- SENATOR AYALA: And that's one of them.

MS. SCHAFER: An aspect of the Los Angeles plan, although there are probably a number of good features to the plan as they propose it, there are aspects which are impractical. And we have dedicated some of the best people, top staffers, at the Air Resources Board to work with the South Coast Air Quality Management District and the City of Los Angeles over the period of the next month to work out a local plan which is soundly based scientifically, which meets the EPA requirements for submittal in the fall, and which also is the most cost effective and practical way of getting the emissions and reductions that we need to do.

SENATOR AYALA: Did the ARB participate in the development of the Mayor's proposal?

MS. SCHAFER: No, we had not done that, but we intend to participate with the South Coast in their review of the Mayor's proposal, as well as the review of their own proposal. And we hope that that will lead to a stronger plan coming to the Air Resources Board for our review in another month.

SENATOR AYALA: But you haven't taken a position on the new proposal by the Mayor as yet?

MS. SCHAFER: No, we have not; however, we've made our staff available to work with them.

SENATOR AYALA: It's interesting that you mentioned Riverside and San Bernardino Counties to add more controls there, and listed the ones in urban Los Angeles, it's interesting because those two counties, Riverside and San



Bernardino, 75 percent of the pollution's intrusion from Orange and L.A. Counties.

Now, that's a fine solution for the Mayor to say:
Hey, with less regulation, but let's stick it to the other
counties.

I'm sure we're not going to hold still for that, I can tell you that.

MS. SCHAFER: I believe in order to achieve some of the Mayor's objectives, the kind of controls that are being suggested have alternatives and may not be necessary.

As I said, we don't want to adopt impractical solutions, and the ones that you're referring to, such as controls over dairy farm operations, do not sound practical to us or necessary.

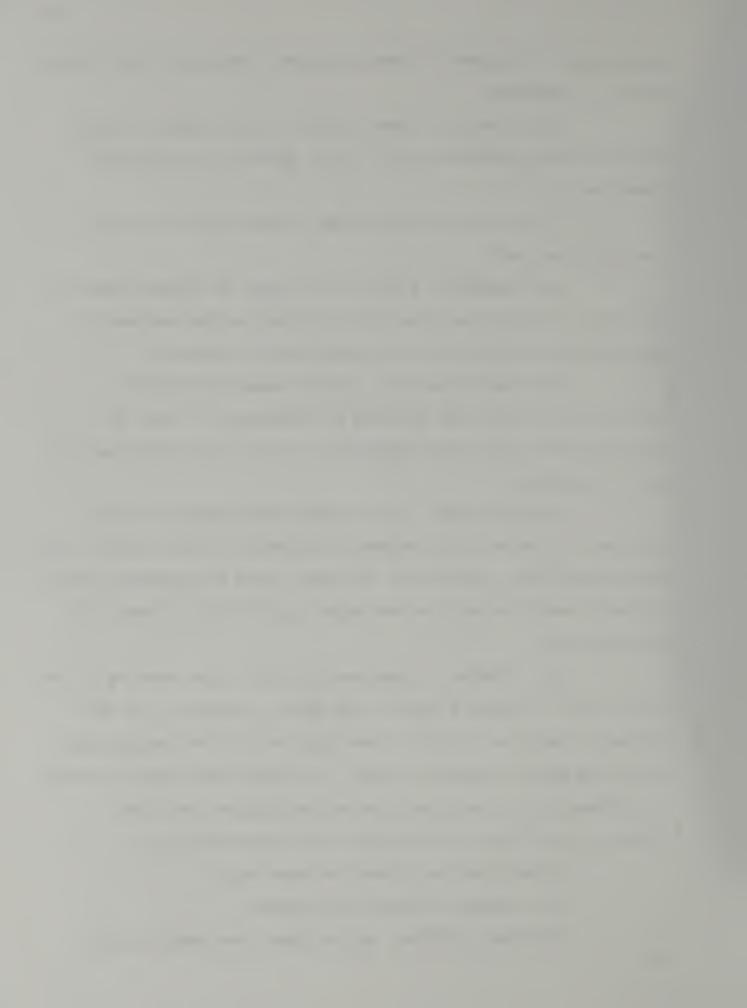
SENATOR AYALA: Has a study been made yet on the proposal to see what the economic interests in those areas, with more regulations, would pose, and what would be economic impact on those two counties that the Mayor would like to throw his pollution to?

MS. SCHAFER: I believe that the first meeting of the groups that's taking a look at the Mayor's proposal was last Friday. They have a lot of tasks that need to be accomplished this week before they meet again. I'm sure that they're looking at whether or not the specifics in the proposal are cost effective, and that will be part of our consideration.

SENATOR AYALA: Thank you very much.

MS. SCHAFER: Thank you, Senator.

CHAIRMAN LOCKYER: We had some considerable grief



last year with respect to diesel fuel requirements and implementation and enforcement.

Is something similar brewing with respect to reformulated gasoline?

MS. SCHAFER: As the Committee knows, the Board adopted its reformulated gasoline regulation, which is the strictest set of rules for controlling emissions from gasoline in the world. It is a very major commitment by the refining industry in this state. About \$5 billion worth of capitol construction is required in order to make this fuel by our deadline of March 1, 1996.

In order to ensure that the regulation which was adopted will be implemented smoothly, the Air Resources Board created an advisory committee on reformulated gasoline, and this committee has a number of subcommittees, the principle efforts of which are going to be to be certain that we have the quantities of the reformulated gasoline available to us so that there are no supply shortages that would have an artificial impact on price when this fuel is introduced in 1996.

The second is, and this is a lesson learned from our diesel experience which we don't want to repeat, the second committee is looking at a testing program to make sure that the reformulated gasolines are -- when they're put into the vehicles in California, not just the new vehicles but the myriad different engines that are in the existing vehicles throughout the state, perform properly. We don't want to have any performance problems as a result of using the reformulated gasoline.



And finally, we need to have an outreach program to explain to the public why we have this new fuel, what its benefits are, and just as an instrument for making sure that the program is implemented well.

One of the things that I've discovered since I've come to the Board is that if there ever was a time when merely voting on a rule was the end of a day for us, that day is over. We have got to continue to work with the regulated community on implementing each and every one of these regulations, and that is a major part of the Air Resources Board's workload, and I think it will be in the future for every one of these regulations. It's the successful introduction of the fuel, or the new technology into our economy that we need to be just as much a part of as we were a part of establishing the rule itself.

CHAIRMAN LOCKYER: I think I heard you say we're not going to re-experience the same difficulties?

MS. SCHAFER: We certainly are taking every precaution to avoid the supply disruption and the performance problems and the misunderstandings that were part of the introduction of the diesel fuel.

The diesel rule is a very effective rule in reducing emissions, and we're happy that we can depend on that in terms of meeting our standards in California and being able to comply Federal Implementation Plan.

We also have high hopes for the reformulated gasoline rule, and we think that in the early years, most of our emission reductions will come from the implementation of that regulation.



CHAIRMAN LOCKYER: Do you have any sense of how much extra it's going to cost consumers?

MS. SCHAFER: The estimate at the time the Air Board adopted that rule was 12-17 cents a gallon to make. Now, the market, of course, is run by supply and demand, and the world price of oil may make it difficult to pass on those costs.

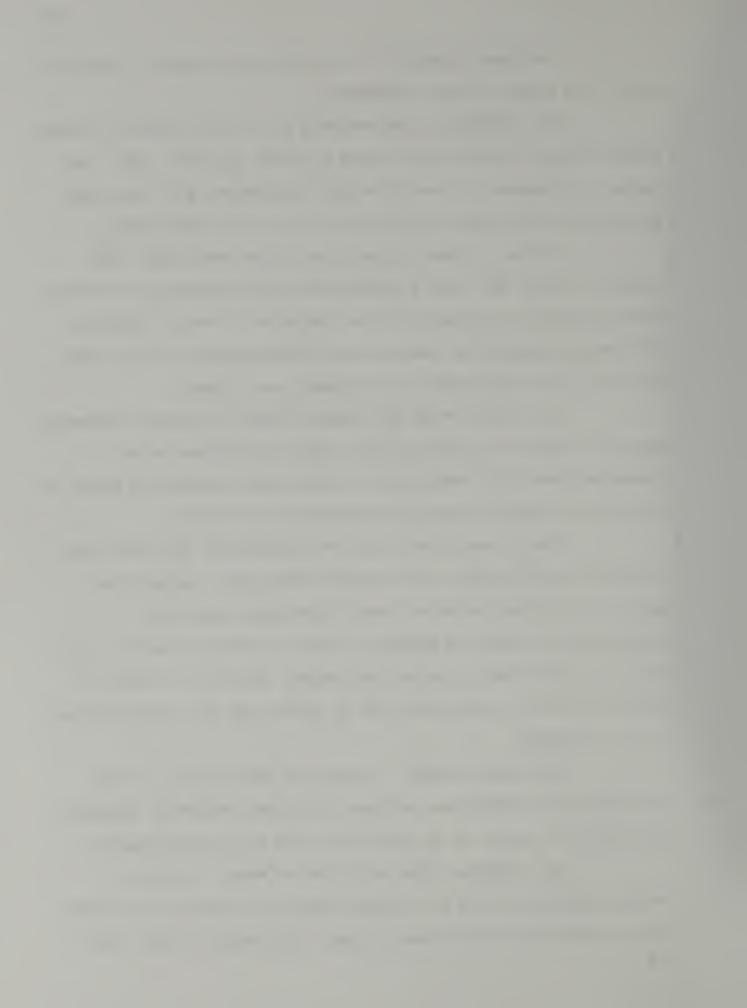
There are some refiners who have testified, for example, before Mr. Katz's committee in the Assembly, that they believe they could make this fuel for about 8 cents a gallon. That really depends on the make-up of the refinery itself, how old it is, what equipment they already have there.

As I said, they are putting into the ground currently about \$5 billion in capitol costs, which will have to be recovered, and also the cost of making this gasoline is going to be much more complicated and therefore more costly.

One of the things that we did earlier this year was to adopt a model which the refiners could use, a predictive model it's called, to allow them to use more than one formulation to meet the properties that we established for this fuel. We hope that by using that model, they will be able to begin to work to reduce the cost of producing this gasoline when it is introduced.

CHAIRMAN LOCKYER: Finally on this topic, do you contemplate any additional actions to either reward or penalize refiners that comply in a timely way with your requirements?

MS. SCHAFER: The rule that we have, I recall, includes opportunities for waivers which would have an economic penalty associated with them if they were required, but those



are generally implemented at the staff level. We expect that -- and certainly what the refiners are telling us is that although it may be a tough deadline to meet, that many of them are well on their way to meeting that deadline, and that most of them expect to be making this kind of gasoline in California in 1996. CHAIRMAN LOCKYER: Ms. Schafer, I'd like to interrupt, come back at about 1:30, if that's convenient for you, to take additional testimony. MS. SCHAFER: Certainly, Mr. Chairman. I'll be happy to. CHAIRMAN LOCKYER: Thank you. We'll recess until 1:30 p.m. [Thereupon the luncheon recess was taken.] --00000--



## AFTERNOON PROCEEDINGS

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CHAIRMAN LOCKYER: I quess we're ready to resume.

I apologize for the fact that we keep sandwiching our meetings in between other things that are happening simultaneously. It's that time of year when we all feel a little like the Ring Master with nine rings all going simultaneously. Hopefully, the elephants aren't loose.

I don't mean the partisan elephants, or the donkeys; neither one.

We left off essentially focused on the FIP and the SIP, and what we might anticipate in that department.

I guess the concern I was trying to express is that there seems to be a pattern in a variety of policy and administrative areas, but a pattern of the administration not wanting to collaborate with the federal policy makers and administrators, but rather to kind of point fingers and blame others for whatever is going on.

This seems to be one of those circumstances, that there's been several months that we've had an opportunity to respond and comment; it hasn't occurred. There were workshops that the feds sponsored; we, I guess, haven't participated. The Clean Air Coalition and L.A. Chamber and others that had negotiations ongoing with the federal EPA invited the ARB to participate; they declined.

The comments by Mr. Strock, at least, calling the Vice President names and so on, seem to suggest an attitude of confrontation rather than collaboration.



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So, I guess those are the concerns that I was trying to get at, and maybe I was too subtle or indirect in the way I approached the matter.

I assume I could probably write your, "Oh, no, we're working hard and together," response, but what do you think about all of that?

MS. SCHAFER: Mr. Chairman, when the Congress wrote the Clean Air Act of 1970, and in all the amendments since then, one of the overriding principles behind that statute was that the federal government would set the standards and leave it to the states to carry out the laws as they saw fit.

Because of the nature of the air quality problem in California, a very, very difficult problem, probably ten times worse than the next worse case, which happens to be New York, where I came from previously, we have established in this state a record that is the envy of the country and of the world in advancing technology to clean up the air. And we're very proud of that record that we have developed. We think that we are showing the way.

And if you look at the Federal Implementation Plan that was proposed, you'll find that much of it is based on the California strategy.

What is unfortunate, through a court reading of a pre-1990 Clean Air Act version, the 1977 version, EPA has been asked to come in and try to substitute its judgment for that of Californians. When they do so, if you look at the actual specific additional measures that they proposed, they are damaging to California in many ways, and they will not address



the air quality problem that we have. It's clear that the FIP has got some problems that are going to cost us a lot from an economic point of view, and because they are unattainable as a technical matter, will not result in air quality improvement.

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As a consequence, our strategy has been to take EPA at its word, which is, if we develop a good State Implementation Plan, they will in fact defer to California as -- in the final analysis. And rather than to try to figure out whether we can make a plan that is based on fees and punitive measures work, we decided to work from a bottom-up perspective with the regulated community and with the air quality districts in the state to produce a State Implementation Plan which we believe will be fully substitutable for the federal plan.

I don't know whether you want to characterize that as confrontational or not. I think it's constructive. It allows us to focus on what I believe the Congress intended, which was for the states to take the lead in carrying out the statute.

It's a formula that's worked very well for us in the past. This is the first time that such a Federal Implementation Plan has been written that just didn't work out very well for us. So, we'd like to see them set that aside, allow us to use the State Plan as the basis for demonstrating attainment, and move forward on that basis.

And I believe that comments that have been made by federal officials are that they will certainly bow to the state when our plan is due and it meets their expectations.

CHAIRMAN LOCKYER: I've heard the same thing, and I fully agree that there are major defects in the federal plan.



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So, it makes sense to try to promulgate a state-sensitive alternative.

What I don't understand is refusing to participate in the EPA workshops, not responding to the problems, the perceived problems, with their plan for six months, not participating in negotiations with the L.A. Chamber and others, and a lot of name-calling.

Those are the acts that suggest to me that the theme this year is the Governor runs against Bill Clinton, which I quess is fine, but as one of his administrators responsible for policy setting and administration of a very important program, I'm disappointed that it gets to your level.

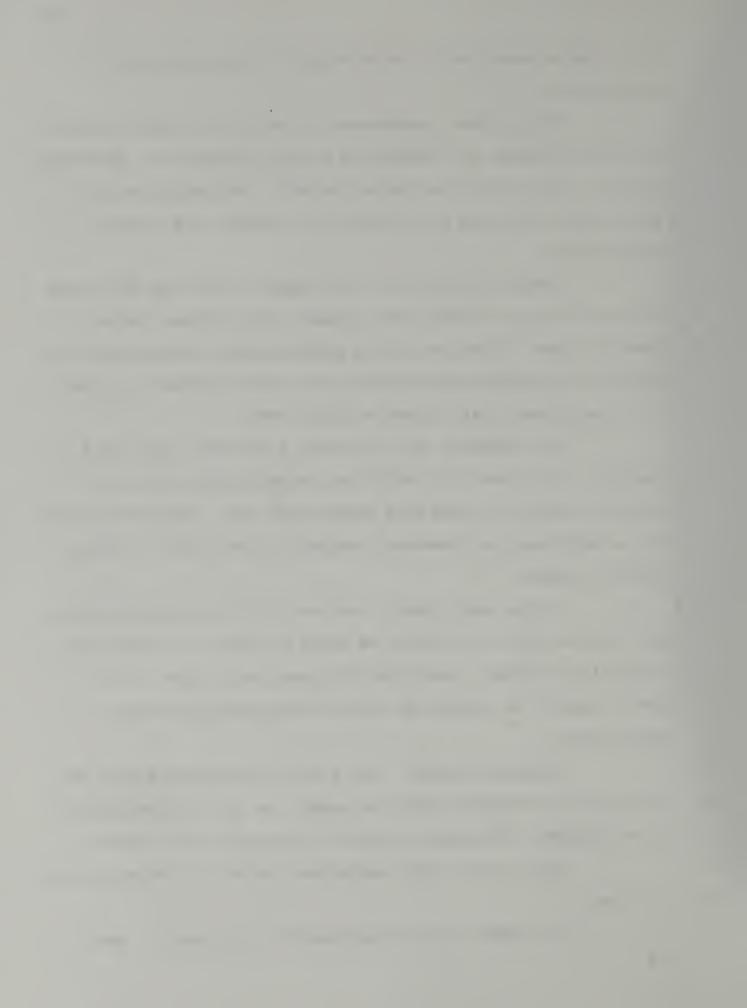
MS. SCHAFER: Mr. Chairman, I have met with the L.A. Chamber, and in fact, our staff has talked to EPA and to the local air districts, and have worked with them. We provide most of the modeling, and inventory analysis on which all of these plans are based.

In the end, though, what we will be held accountable for, and what EPA has told us we would be held accountable for, is putting together a good State Implementation Plan. that's where I've focused my effort consistently since my appointment.

CHAIRMAN LOCKYER: Let's ask if there are people who would wish to comment, either in support of or in opposition or raise concerns, whichever you might characterize your views.

Let me start with supporters, maybe, if there are any of those.

> Good afternoon, sir. My name is Carl MR. PERRY:



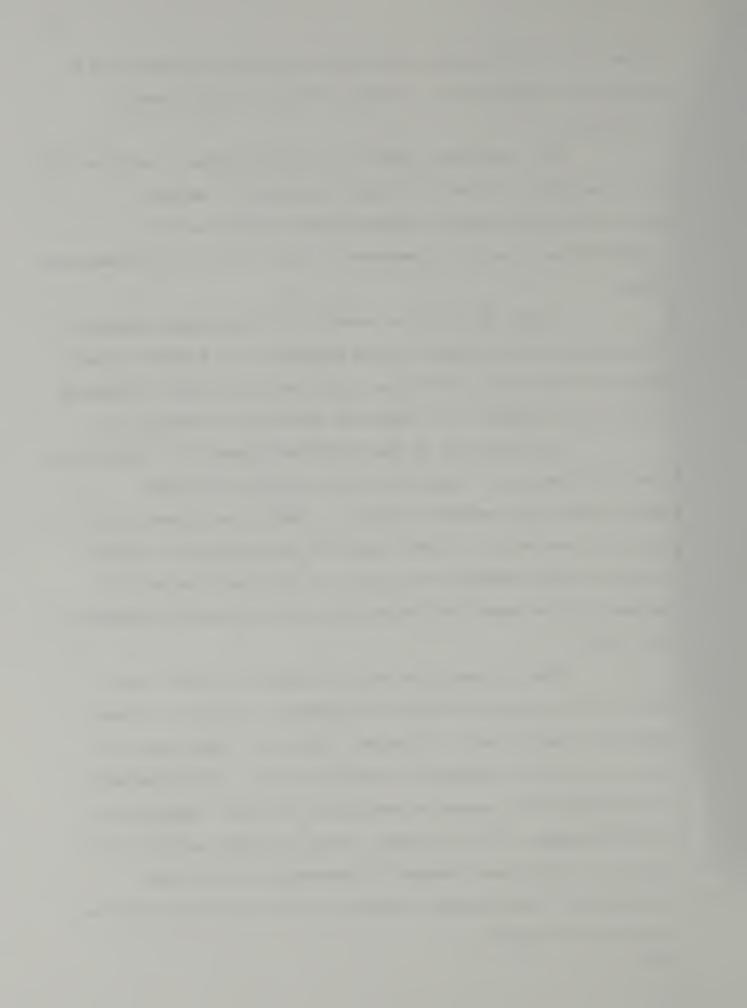
Perry. I'm the President and Chief Executive Officer of U.S. Electricar International, which is based in Santa Rosa, California.

Mr. Chairman, Members of the Committee, thank you for the opportunity to testify today in support of several outstanding individuals, unquestionably qualified for confirmation to serve as members of the California Air Resources Board.

Under the capable leadership of Chairman Jacqueline Schafer and her colleague, Lynne Edgerton, the Air Resources Board is leading the effort to bring California the tremendous health, environmental and economic benefits of cleaner air.

As President of the California-based U.S. Electricar, and I believe, sir, that we are the largest full line manufacturer of electric vehicles in the United States and possibly the world, I'm here today as proof that the vision, leadership and demonstration shown by Chairman Schafer and members of the Board are beginning to pay tangible dividends to our state.

The Air Resources Board's support of clean fuel vehicles has created a positive business climate and allowed advanced transportation companies, like U.S. Electricar, to raise millions of dollars of private capitol, form strategic partnerships with companies worldwide, and most importantly, employ hundreds of Californians. Many of those people on our payroll are displaced defense and aerospace workers and economically disadvantaged residents of the riot-torn part of downtown Los Angeles.



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If I might say, sir, that we have capacity -- the question has been asked: well, with these mandates and where we're going with CARB, is the technology there? Are the vehicles there? Is the market there?

My company's a small company, but we have facilities in Los Angeles, Redlands, California. We are, in a sense, in partnership with General Motors; we buy our drive systems from General Motors-Hughes. We buy our cars from -- really they're Geo Prisms and the Chevrolet X10s that we convert.

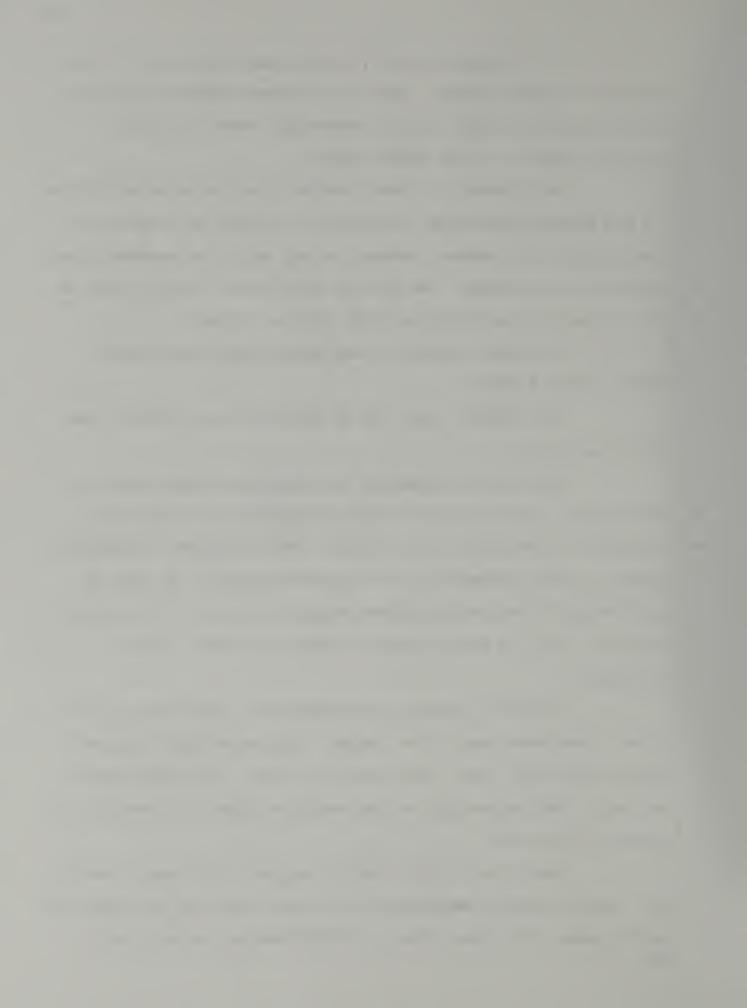
CHAIRMAN LOCKYER: Keep buying those Geo Prisms. They're from Fremont.

MR. PERRY: Yes. We're going to buy 2,000 of them this year, sir.

We have the capacity to build over 4,000 vehicles this year. This is at the time some parts of the automotive industry say the market isn't there. We've raised a tremendous amount of money ourselves; it's private capitol. We have no real federal money or any other money like that. It's our own capitol. So, I'm saying that the market is here. We're building.

CARB has created this atmosphere. They have stood firm. They have stayed the course. They have fought against people who said, "Well, the time is not now, the technology is not now. The technology and the vehicles cannot be made and the market is not now."

And I would just like to say as a California company who started with 20 employees last August, who has 300 employees as we speak, will have close to 900 by the end of our fiscal



year which will be next July, we'd like to refute those statements because we think we're a living, breathing proof that it can be done in California, and it does work, and the technology is here.

We're also putting a facility in New York State, along with Governor Cuomo. We are part of NAFTA in building vehicles to help Mexico City. We're also working in Canada. We're exporting our technology, and we are building our vehicles from California to export to Japan.

So, in summary, I would say, sir, that it's critical that the members before you, both Jacqueline Schafer and Lynne Edgerton, before you today are confirmed so that our Resources Board can continue to promote the policies and programs to protect public health and stimulate the development of environmental technologies and advanced transportation in our state, and in the industries concomitant with that.

The continued leadership of the Air Resources Board will allow California to maintain the lead in the global race to develop new environmental and transportation industries. We're proud to be a part of it.

Thank you very much.

CHAIRMAN LOCKYER: Thank you, Mr. Perry.

MR. TORRENS: Mr. Chairman, Members, I'm John Torrens, represent PG&E.

When Chairwoman Sharpless left the ARB, we had three major initiatives going with the Air Resources Board, and we were somewhat concerned that the impetus, the money, and the staff leadership that had been experienced to date would somehow



be lost when Chairwoman Schafer came. So, we met with her, and we expressed our concerns over the San Joaquin Valley air study, which is a \$17 million modeling study that will be the state of the art air quality modeling study ever done in the world; the NO<sup>X</sup> retrofit program, a \$250 million program where all of our existing fossil-fired power plants are being equipped with state of the art NO<sup>X</sup> control devices; and finally, our clean air vehicle program which emphasized the use of natural gas and electric powered vehicles.

The San Joaquin Valley air study is now producing results the likes of which have never been seen by science before. We know where the pollution is coming from, where it's going, and how it's interacting with the weather and the air in California.

The NO<sup>X</sup> retrofit program is out to bid. Construction in some of our power plants is underway, and soon our NO<sup>X</sup> emissions from our major fossil units will be reduced by 90 percent, and on a schedule that is fair to our shareholders and ratepayers.

And you cannot go out and cross L Street today, right now, without seeing a natural gas bus drive by. And you'll see natural gas cars and buses just about everywhere you go in California, followed soon, we believe, by electric.

So what I'm trying to point out to you in support of Chairwoman Schafer is that the initiatives that were started as far as our company is concerned have been not only carried out, some cases finished up, and in a timely way, and in a way that has been economic for us and our ratepayers.



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We would encourage you to recommend confirmation of Chairwoman Schafer. Thank you.

CHAIRMAN LOCKYER: Thank you.

MR. GREENE: Mr. Chairman, Members, I'm Jim Greene, representing Southern California Gas Company.

Since the Chairwoman's appointment, we've had a chance to work with her and observe her work. We have been very impressed with both her technical skills and her leadership abilities, particularly in the low emission vehicle area, which is of concern to us, and we would urge her confirmation.

Thank you.

CHAIRMAN LOCKYER: Thank you.

MS. MARTIN: Mr. Chairman and Members, I'm Cecile
Martin. I'm the Deputy Director of the California Electric
Transportation Coalition, and I'm speaking today on behalf of
our founding members' and state's major electric, and electric
and gas utilities, both investor owned and municipal.

We're here to support Ms. Schafer's confirmation as Chairwoman of the California Air Resources Board. We and our members have found Ms. Schafer to be informed and attentive to California's air quality challenges. She's been a strong supporter of California's low emission vehicle program, and we have applauded Ms. Schafer's particular interest and sensitivity to the economic development and export potential of California's nascent advanced transportation technology industry.

We urge you an aye vote on her confirmation. Thank you.



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MR. THOMAS: Mr. Chairman, Members of this Committee, my name is Michael Thomas. I am from the California Trucking Association.

I am here today to cast an aye vote and ask for your confirmation for Ms. Schafer to the Air Resources Board. CTA has spent thousands of man hours investigating the FIP. We have attended virtually all hearings.

I am here to tell you today that I was present at the South Coast AQMD hearings two weeks ago. ARB was there, and ARB was named to the special committee appointed by the chairman down there to investigate their plan. So, ARB is participating.

I am also here to tell you that the CTA and ARB were together at a symposium in Huntington Beach two weeks ago where we introduced numerous alternative plans that could be instituted in a state SIP.

I am also here to answer any question that you may have concerning the Federal Implementation Plan and its results with California.

Thank you.

CHAIRMAN LOCKYER: Thank you, sir.

MR. ROSS: Mr. Chairman and Members, my name is Tommy Ross on behalf of Southern California Edison.

We agree with the statements by the previous witnesses. We also strongly support Ms. Schafer's appointment as Chair of the Air Resources Board and encourage you to vote for that nomination.

One brief statement that I'd like to make is that contrary to characterizing her tenure as being confrontational,



from our perspective we've found her to exercise very substantial leadership skills. We've found her approach to be balanced, fair, and we found her to be very approachable.

We again encourage you to vote in favor of her appointment.

CHAIRMAN LOCKYER: Thank you.

MS. TUCK: Thank you, Chairman Lockyer and Members.

Cindy Tuck today on behalf of two organizations. First is

CCEEB, the California Council for Environmental and Economic

Balance, and also the California Grape and Tree Fruit League.

Both of these organizations support the confirmation of Ms. Schafer. We urge your aye vote.

Thank you.

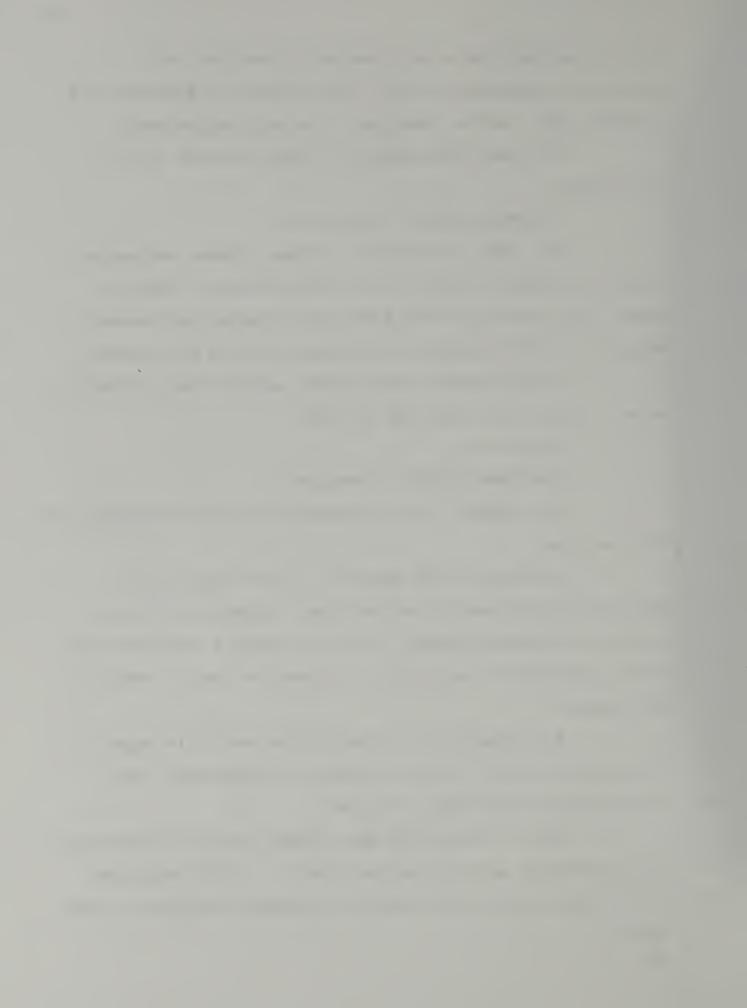
CHAIRMAN LOCKYER: Thank you.

MR. KENNEDY: Good afternoon, Chairman and Members of the Committee.

My name is John Kennedy. I'm the Director of Advanced Applications for Allied Signal Aerospace, a large California aerospace company. We are currently involved with several programs on fuel cell development and hybrid vehicle development.

I've submitted a letter for the record in support of this nomination, but I'd like to make some comments. And I think several things come out to me.

One is, Jacqueline has a superb record of achievement in environmental matters over her career. I think everybody should keep that in mind, that she has been an achiever in that field.



I think several of the other speakers have already pointed out the most important thing to us, and that is the leadership issue here, because I really think that what we need as we go forward is leadership, even more than in the past. I also think it's been noted by several people that she has a very clear view of the interaction of economic and environmental concerns, and recognizes that they do not have to be confrontation, that there are solutions that consider both and are constructive on both fronts.

And I'd like to emphasize especially the impact of far-sighted leadership at CARB in the future, because as we go into the 21st Century, with environmentally friendly and energy efficient technologies, California needs to retool its great economic base in high tech to generate those technologies, and generate the jobs, and generate sustainable growth with a better environment.

We urge confirmation. Thank you.

MR. NORTHROP: Mr. Chairman and Members, my name is Bill Northrup. I'm Executive Vice President of the Independent Oil Producers Agency.

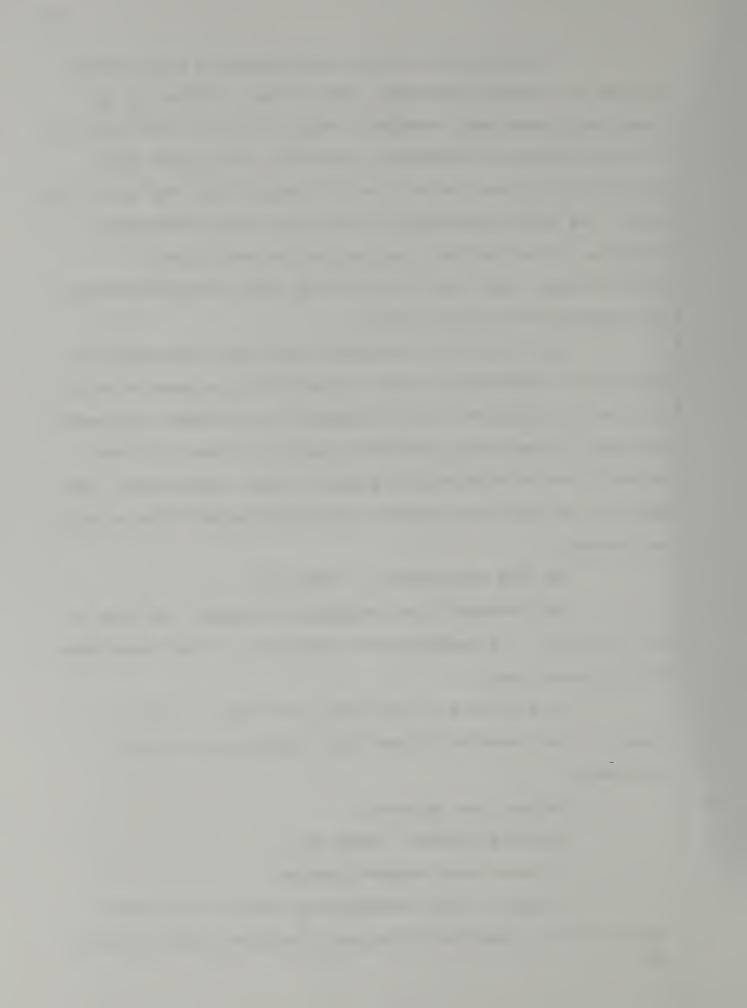
We submitted a letter for the record. I shan't repeat all the laudatory things that have been said about Ms. Schafer.

We urge your approval.

CHAIRMAN LOCKYER: Thank you.

Is there other support present?

Perhaps I could interrupt any opposition comment simply to ask a couple of additional questions, partly because



I'm anticipating there'll be some issues raised during other comment.

I guess the Air Resources Board has indicated that you are fuel neutral as to clean air issues. It is at least claimed that representations have been made that whatever the federal policy is, we would work to implement that federal mandate or direction.

That seems to be contradicted by Cal-EPA using your studies and data in joining the lawsuit challenging the federal reg. on fuel additives.

I guess I'd like to draw you out on the issue of ARB's involvement in that issue, or your own thoughts about whether that was a wise or unwise decision for Cal-EPA to make?

MS. SCHAFER: The California Air Resources Board did submit an affidavit in a lawsuit, objecting to the implementation of EPA's renewable oxygenate rule. EPA's rule was finalized at the end of June. However, in February of this year, and this position that we have taken at ARB is a position that we have been consistent in for the last 20 years or so, we've commented on the rule when it was still a proposal.

The problem that we have with EPA's rule is that it specifies a fixed percent of ethanol or its derivatives, renewable oxygenates, as an additive to gasoline. And what we discovered in that rule extensively as a result of the oil embargo of the mid-70's, that adding these alcohol fuels actually increased their volatility and created a problem in terms of air quality.

So, our concern has been, as we've developed our



regulations over the years and improved on those to the point to where we're adopting a reformulated gasoline standard effective on March of 1996, that we have the best fuel possible, and the most flexible operating characteristics possible, so that our refiners can meet the standards, get the maximum benefit from this, as I mentioned earlier, \$5 billion worth of capitol investment that we are putting in in California.

The EPA regulation makes it more difficult to do that, because it requires a particular fixed percentage of ethanol or ethanol derivative. In one extreme in Southern California -- and this rule, the EPA rules only apply in Los Angles and San Diego -- that we could be penalized as much as 20 tons a day for using ethanol.

The alternative derivative would, in fact, increase our cost significantly, and we discussed that earlier. We'd already estimated increasing the cost of gasoline as the result of our reformulation, and we'd like to be able to have incentives that would allow the industry to drive the cost of production down and not up. One of the problems is that EPA's rule will increase the costs in California.

So, what we'd like to do is to keep fuel neutral.

Any fuel that can meet the specifications that we've identified in our regulation is one that's acceptable to us. EPA did not allow us that flexibility, so we objected to it and also made our views known to the court, which is considering a motion to stay the implementation of those regulations.

CHAIRMAN LOCKYER: So that anxiety about the science and the volatility standards was, in your view, what prompted



the lawsuit?

MS. SCHAFER: Well, for California's participation, our objection to EPA's renewable oxygenate rule is based on a history that we have had since 1971, when we adopted regulations limiting the RVP measure of volatility. We have a very strict set of parameters with our new reformulated gasoline, including a very low RVP number for controlling the characteristics of these fuels.

We believe that EPA's rule interferes with our ability to achieve those goals in terms of emission reductions, and we feel that we should have objected to that, and we did that.

We have -- the Legislature has considered waivers from our RVP rule over the years, but most recently they added a condition specifying -- I think this was last year -- that ethanol blends must comply with the comprehensive standard that ARB establishes for reformulated rules.

Again, we believe that our way is the best way for us in California to proceed, and that EPA introduced an artificial requirement that would make it more difficult for us to achieve the air quality standards and would make it more expensive.

CHAIRMAN LOCKYER: Let me move on to ask about Mayor Riordan's proposals that regulatory activity in the Los Angeles area ought to be reduced or suspended because of job impacts, and he's recommended that San Bernardino and Riverside Counties be involved to a greater extent in ammonia reduction at dairies, or other efforts, that would help meet the goals.

Do you have a view about those recommendations? Have



you spent time analyzing them?

MS. SCHAFER: No. As I explained to Senator Ayala, his plan has surfaced only recently at the South Coast Air Management hearing on August the 12th. As a result of his introducing alternatives, the South Coast, which is developing their portion of the plan that becomes part of the State Implementation Plan, decided to take a good look at the plan that the Mayor proposed.

Our concern is to make sure that the modeling that's done in the South Coast plan is correctly applied, and we think that they're both using good models, which really depends on who you -- what kind of assumptions you put in.

The issue here is that you can achieve the air quality that we require in Southern California to demonstrate attainment by having various levels of control over volatile organic compounds and oxides of nitrogen. These can be -- there are tradeoffs among them. And so, if you plot these on a curve, you can pick any place on the curve to get those kinds of emission reductions, so you have to make a decision, a policy decision, which the South Coast is involved in making, of what's the optimal trade-off of those control strategies to get to the attainment demonstration. That's the kind of technical discussion that's going on right now and will proceed for the next month.

The specific proposals that are in the Los Angeles
plan I have not personally reviewed, but if Southern
California's South Coast Air Quality Management District
includes some of those in their plan to us, we will review it at



the state level when it comes to us.

Our role now is to have staff participation to make sure that they have the best science, the best modeling, and the most practical set of assumptions going in, but as I indicated to Senator Ayala, we certainly have no intention of passing along as part of the state plan something that is impractical and suboptimal in terms of the control strategy.

CHAIRMAN LOCKYER: Senator Ayala.

SENATOR AYALA: I have a couple other questions I'd like to put before you.

It's been brought to my attention that it appears as if the ARB is no longer enforcing the heavy vehicle smog inspection program, that no citations have been issued to violators of the smoke emission truck standards.

Do you know if that's correct or not?

MS. SCHAFER: Prior to my joining the Board, prior to my appointment, the Air Resources Board did shift resources, staff resources, from enforcement of the heavy duty standards -- heavy duty truck smoke regulation, over to working on other aspects of our diesel fuel regulations. And in the interim, it's our understanding, and I believe the Legislature has supported this, that we need to take another look at how we're going about actually taking that test.

We are working with the institutions, professional institutions, that actually developed good test procedures to use, and until our confidence is increased that the test that we are running is the best test for doing that, we probably will not be doing any additional checks against the old standard.



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The old standard was the best available at the time, but the suggestion that we've had from all concerned is that there is a better standard that we should be aiming towards, and we expect to have that better standard available to us later this year, in which case we will again address the enforcement of heavy duty smoke.

But it was resource issue, the decision that was made prior to my taking office. In the meantime, technical questions have been raised, and we're working towards coming up with the best test that will be the most consistent in fairness in terms of stopping these trucks on the roadside and --

SENATOR AYALA: Currently, the truck smoke emissions inspection program is no longer in operation; is that what you're saying?

It's been suspended pending the MS. SCHAFER: identification of a better test and a more consistent and dependable test to do that.

SENATOR AYALA: It's kind of unfair for the regular passengers that have to stand inspections, smog inspections, of their cars before they're issued a new license and so forth, and let the trucks, who are emitting heavy-duty smoke, just get away with it.

MS. SCHAFER: The snap idle test, as this is called, is not the only enforcement tool that we have available to us. Fleets that operate trucks in California are expected to have a program in place to do self-inspections and to make sure that their -- the engines in their vehicles are performing properly.

It is not exactly like the test that we have for

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passenger cars, but it's one that we think is effective.

This additional so-called snap idle test is one that we have depended on, but some technical problems have arisen, and until we resolve those, we would prefer not to put a procedure in place that is not one that we have a lot of confidence in.

SENATOR AYALA: You and I discussed the health risk at great length the other day.

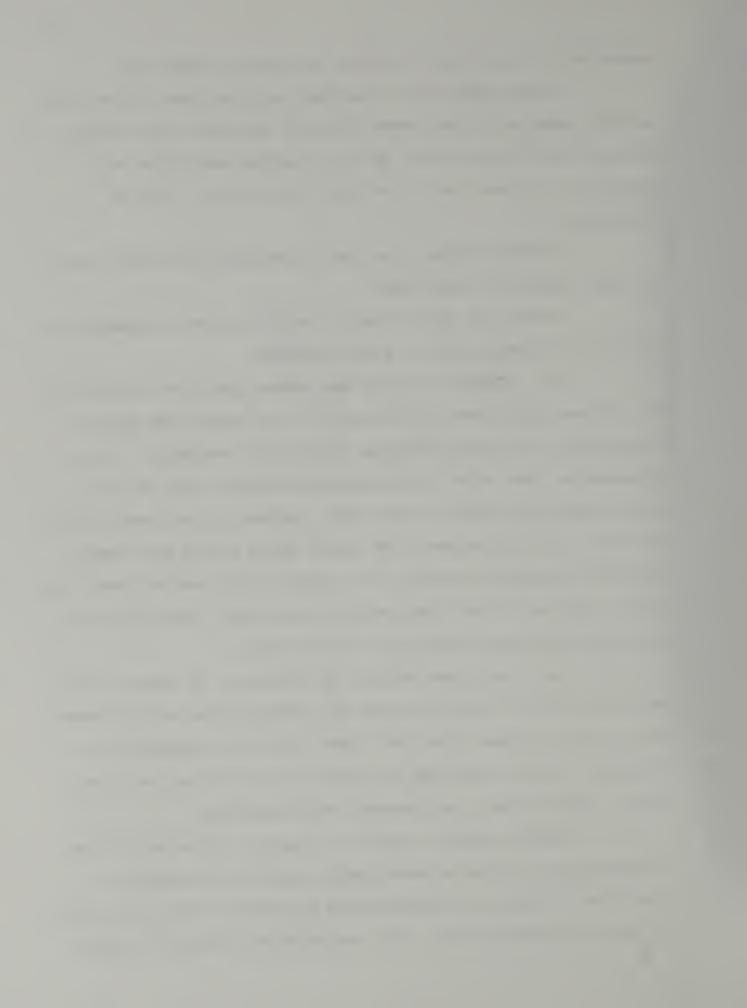
What risk does allowing loading trucks to operate on California highways pose to public health?

MS. SCHAFER: One of the issues that was raised with our reformulated diesel fuel was to try to reduce the health consequences of those emissions, the exhaust emissions. As a consequence, just with the reformulated diesel fuel, we will reduce emissions about -- that are of concern from a toxic point of view, about 25 percent. So, we're going a long way towards reducing any health exposure from these trucks just by that rule alone, because you put that reformulated diesel fuel into all the trucks that are buying gas in California.

As I mentioned earlier in testimony, we expect that a major part of our future program for demonstration of attainment that we have to make later this year will be to establish new standards to make sure that as trucks are introduced into the fleet, that they are the cleanest trucks possible.

SENATOR AYALA: Doesn't a flagrant violation of the truck emission standards erode public support for efforts to clean the air that may inconvenience the regular motorists, such as the smog check program? Why should we be lenient on trucks,

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who are really polluting heavily, and be very strict with everyone that drives a car? It doesn't make sense to me, why you're doing that.

MS. SCHAFER: We want fairness not only between the operators of trucks and operators of passenger vehicles, that is part of our program. We also want fairness among operators of truck fleets, and there are some outstanding truck fleet operators who are trying to do the right thing. It doesn't do them any favors, and it doesn't increase their confidence, if there are other members of the trucking organizations that don't meet those standards.

So, even-handed enforcement policy is, in fact, underlying our approach to this throughout.

SENATOR AYALA: Until they start realizing that they are going to be citing some of these polluting trucks, I can understand why the trucking association supports you, because they're getting away right now with something they shouldn't.

MS. SCHAFER: I don't think that's true. As I said before, we have standards. They are in place, and the fleets must observe them. And we have ways of reviewing, from an enforcement point of view, whether or not they're doing a good job.

This one tool is a tool that we would like to be able to use, but we want to use with with greater confidence than we have now, and we need to have the new standard, the SI standard, finalized before we reinstitute it.

But we do have an enforcement program. It is designed to keep an even-handed enforcement policy with respect



to cars and trucks, and among the truck fleets themselves.

SENATOR AYALA: Thank you.

MS. SCHAFER: Thank you, Senator.

CHAIRMAN LOCKYER: Well, I think Senator Ayala,
perhaps, has highlighted one area. Senator Petris's staff shows
me others; perhaps he'll want to comment on the others.

It appears that economic analysis rather than health and safety focus dominates in CARB. I guess that's somewhat a subjective evaluation, but as I read the correspondence, it's always an economic emphasis on the letters that are written and testimony provided, and so on.

That's not to say that we shouldn't be sensitive to our state's economy because, obviously, we have to be. But there's a certain tone about it. Maybe it is reflected in your own training as an economist, but I just note that the areas of diesel emissions, the ethanol issue, and others, seem to reflect that administration's concern about economic matters rather than clean air.

In my mind, that is violative of your fundamental mission statement, and you don't have to respond.

MS. SCHAFER: Mr. Chairman, if I may, I would like to, however.

CHAIRMAN LOCKYER: Yes.

MS. SCHAFER: It's been my experience, after working in this field for over 25 years, that the only way that we can reach our environmental goals, and I subscribe fully to the environmental goals that we have established here in California and under the federal statutes that we also must operate, the



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way we can do that is to make sure that we have a strong, healthy and growing economy. That is the way we can afford to put into place the new technologies that we need to achieve the emission reductions that we all need.

As I said in my opening statement, I believe that these can work in tandem. I think we've heard from Mr. Perry that in fact they have worked to help to stimulate new economic activity in the environmental technology field, and I think that is something that we can look forward to. That will help all Californians clean up the air as well as enjoy the benefits of a prosperous, free society.

CHAIRMAN LOCKYER: Well, okay. I guess by way of response, I'd point out, first of all, that the initiatives referred to are ones begun in the previous administration. Mostly what I have seen during the current administration is an emphasis on accumulating power, and centralizing, and bringing more and more power into the hands of upper level bureaucrats.

And when you ask about substantive results, it's all a work in progress: well, we're working on a new regulation; we're working on a new system; we're working on a new model; we're thinking about responding or complying. It's all a work in progress.

It's very hard to evaluate the work product of this administration, other than to say that there seems to be a preoccupation with getting a grip on more and more power, and that's it. There's very little sense of what they want to do with the power once they get it.

SENATOR CRAVEN: May I, Mr. Chairman.



.  CHAIRMAN LOCKYER: Senator Craven.

SENATOR CRAVEN: What are you talking about? I don't understand that at all.

CHAIRMAN LOCKYER: Well, with respect to the issues before us, we hear again and again: well, yes, we've had six months to respond to the federal requirement. We're still thinking of doing that between August 22nd and August 31st.

Then, we're working with the South Coast and others to propose a State Implementation Plan. I assume that there's a lot of work involved in evaluating and responding to those local suggestions as they trickle up, but that has to be done a couple months from now, two and a half months.

And it's always a work in progress. I never see, you know, somebody creates controversy, so she gets fired. Somebody else initiates, and they get pushed aside while we think about it some more.

So, what I've seen is an administration preoccupied, and I think it is endemic to the captain of the ship. That's where it starts from, that there's an administration preoccupied by getting more and more power clutched into its bosom.

SENATOR CRAVEN: I have to disagree with you on that.

CHAIRMAN LOCKYER: I respect the disagreement. I'm telling you what my observations are. Nothing comes out of it. It's just a lot of get power, and think about things, and then nothing ever happens. It's frustrating.

SENATOR CRAVEN: May I respond, Mr. Chairman?
CHAIRMAN LOCKYER: Certainly.

SENATOR CRAVEN: I think there is a preoccupation,



but I think that preoccupation is channeled definitely toward a technological improvement on what we have done heretofore. And when they take time -- you've mentioned that, and I would agree, it takes time, obviously, and I'm sure that you agree with that.

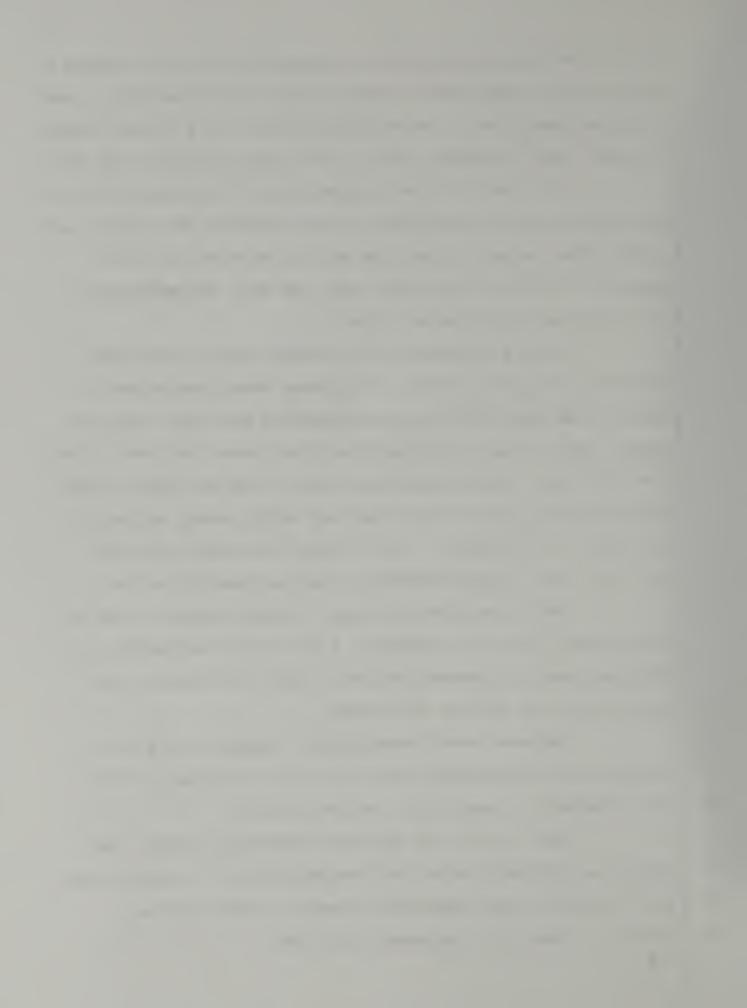
You deal with Los Angeles, one of the great cities in the world, to try to take care of their problem; San Diego, one of the other larger cities, that has to be worked on as it applies to both of those areas, and that must be implemented into the plan of the entire state.

Now, I've heard a lot of people come in here and testify in many, many years. I've never heard anyone who I think in any way could show more expertise than this lady has shown. And I think you would have to be almost deaf not to feel that she knows exactly what she's doing. She can refer to what they have done, and I'm sure that she is big enough to say if they have not succeeded. I don't recall that she really has said that, but that was something that happened before her.

But to me, she has shown, I think the get-up and go that we need. But, Mr. Chairman, I don't feel that anything that she does, she assumes because of might that she or her organization was just to be powerful.

She must serve someone well, because in the blue sheets here are the people who have chosen to comment, 17 of them endorsed her completely, and one did not.

Now, I'm not say that that necessarily makes them right, but ordinarily when you have that kind of a relationship with the public, and they seem to return a feeling or an opinion, I have to be impressed with that.



CHAIRMAN LOCKYER: Well, I respect your analysis.

SENATOR CRAVEN: Thank you, Mr. Chairman.

CHAIRMAN LOCKYER: Maybe we could ask if there are any opposition. There might be a couple of them. they might come forward, who ever wishes to comment.

MR. VIND: Mr. Chairman, my name is Richard Vind.

I'm Chair and Chief Executive Officer of Regent International.

We are in the ethanol business in California, and have been since 1979.

I am disappointed to have to appear here today before you on behalf of the ethanol producers to raise serious concerns about the leadership of Ms. Schafer at the Air Resources Board.

When she was first appointed, our industry was asked by our Governor to meet with her in order to confirm her fuel neutrality. And he asked us to enlist our support in order to confirm her in the Senate here.

During that meeting, we asked Ms. Schafer what her agency would do if the federal EPA passed an ethanol mandate as part of its renewable oxygenate requirement. She responded that if California was not exempted, as she expected, she would work closely with our industry in its implementation.

You could imagine my concern, therefore, when after the EPA's ethanol mandate was adopted, that California EPA Secretary, James Strock, cited CARB data in an affidavit to the U.S. Court of Appeals attacking the renewable oxygenate requirement by declaring ethanol to be a dirty fuel.

It occurred to me that the reason for this action



might lie in the fact the only other party in the lawsuit is the major oil companies who are adamantly opposed to expanding the use of ethanol. The unholy alliance between big oil and the agency expected to protect California's environment was partially confirmed by Secretary Strock's outrageous attack on the Vice President of the United States for his key vote in the Senate, ratifying the renewable oxygenate program. In a blatantly politically motivated attack, Secretary Strock called Vice President Gore "a pathetic spectacle" for his action on the EPA initiative, the same agency which Ms. Schafer used to work for.

Not until last Friday, though, did I observe irrefutable proof that the attack on ethanol is political pay-back for the concern the major oil companies have about the reformulated gas rule, which Ms. Schafer says, repeatedly has said today, will cost the major oil companies \$5 billion. I don't dispute that.

Thanks to the California Public Records Act, which this body passed some years ago, I have obtained documents that clearly show that senior staff at the California Air Resources Board submitted a preliminary draft of Mr. Strock's affidavit to the oil industry for comments and changes three days before the document was officially submitted to the Federal Court of Appeals. This smoking gun memo is not listed among the documents that were turned over to me, which my lawyers tell me that this practice is a violation of the Bagley-Keene Open Meeting Act, which prohibits private communications by state agency officials regarding policy rule implementation.



CHAIRMAN LOCKYER: We have these documents that have been supplied to us that maybe you could help us interpret.

MR. VIND: That's fine, Mr. Chairman. I'm almost finished here.

I did want to point out, it should be noted that the same preliminary draft that the fine folks at Texaco were privileged to receive was refused to me when I requested it under the California Public Records Act request of August 11. In fact, it was said that this was not the public interest to disclose it to me, but it was given to Texaco and Chevron one day -- two days prior to Secretary Strock filing this with the Federal Court.

My questions for Ms. Schafer: were you aware of that unholy alliance between your top staff and the oil industry? And if you were not, why, as chief executive of this important board, were you not aware of such critical policy action by your senior staff? And finally, if confirmed, would it continue to be your practice or the practice of your agency to allow major oil companies to write the air quality policy for California?

Mr. Chairman, I refer you to the August 18 memorandum.

CHAIRMAN LOCKYER: Explain these documents to us, if you would.

Have you seen these? Would you like a copy?

MR. VIND: I have highlighted them, which might make it easier for the Members to follow.

CHAIRMAN LOCKYER: I don't have highlighted ones, if



you want to distribute those.

MR. VIND: If you'll notice, in the response dated August 18th by the California EPA to my lawyer, Mr. Andrew Bracker, this was in response to the August 11th California Public Records Act request for documents pertaining to the Cal-EPA's affidavit they filed in Federal Court to try to overturn the EPA's renewable oxygenate requirement.

If you'll notice in paragraph two, it says:

"Attachment A hereto lists all of the documents and records ..."

all of the documents.

Paragraph three says: "... with the one exception noted below ..." Paragraph four cites the reason that they withheld this document. It says:

"We are withholding a preliminary draft of the affidavit that was transmitted July 26, 1994. [They are] not required to be disclosed provided that the public interest in withholding the records clearly outweighs the public interest in disclosure. There is an important public interest in withholding such drafts so that the deliberative processes within the agency are not restrained."

This is the same draft that was sent on July 27th to Texaco and Chevron for comment.

CHAIRMAN LOCKYER: How do we know that?

MR. VIND: If you'll refer to the last two pages.

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CHAIRMAN LOCKYER: So, you're saying two days before Mr. Strock joined the lawsuit, in effect joined it with the oil refiners, that the affidavit that he would submit in joining into that lawsuit was circulated to the oil refiners but refused circulation to your --

MR. VIND: It was never offered to us, yet when we asked for it after the fact, for the working documents, they claim privilege, that they could not give it to us because it was not a public document.

Texaco finally did respond on July 27th, as noted, to Dean Simeroth on the Air Resources Board staff, with a copy to Al Jessel of Chevron Oil Company, with comments, three comments. And it says:

"Dean:

"I've reviewed the draft affidavit provided by Mike Kenny ..."

who's with your Legal Affairs Department,

"and I have a few comments."

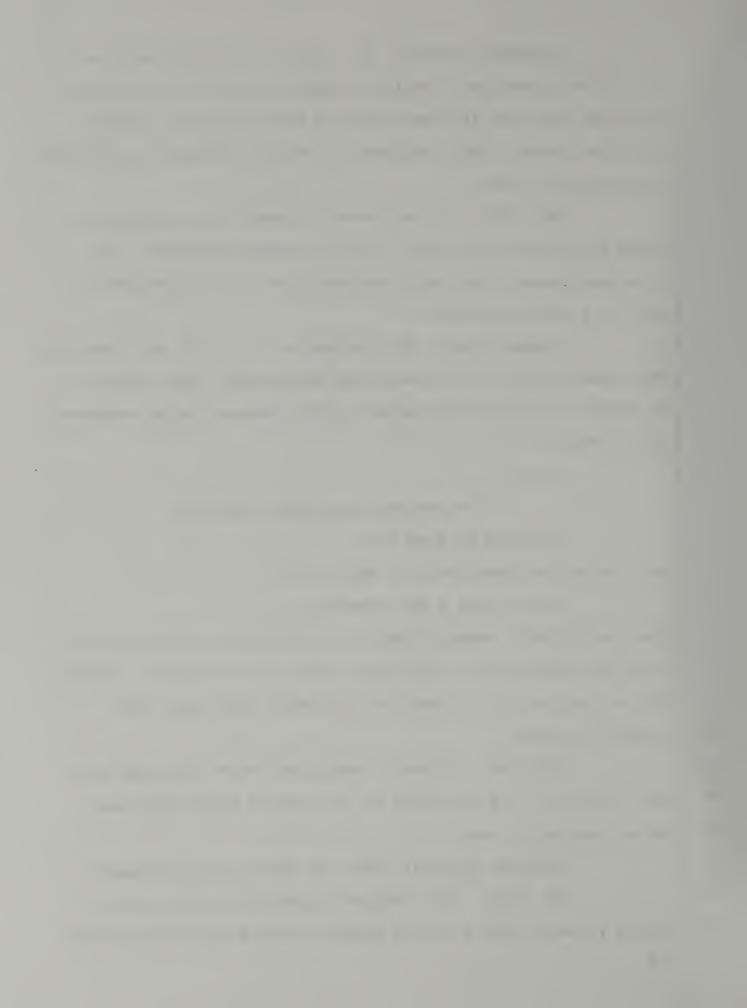
What is curiously missing from this is Chevron's letter, which we do not have, but we are filing today with the agency a demand that we receive all of the other documents that have been withheld from us.

This one, obviously, was given to us when they didn't want to do it. I'm sure this is the type of thing they would rather have us not see.

CHAIRMAN LOCKYER: What was specifically refused?

MR. VIND: The draft of the affidavit that James

Strock filed on behalf of the People of the State of California.



CHAIRMAN LOCKYER: That's this first document.

MR. VIND: That's correct, which had been submitted to the oil companies, at least two, two days prior to filing with the Federal Court to overturn the renewable oxygenate program.

CHAIRMAN LOCKYER: Have you been able to tell whether, when those documents were ricocheted between Cal-EPA and oil companies, whether there were any changes made? Are you able to tell that?

MR. VIND: No, sir, I could not tell at this time because I do not have the Chevron response which has been withheld form us.

CHAIRMAN LOCKYER: The Texaco comments?

MR. VIND: The Texaco comments in part were incorporated into the Strock affidavit, but again, Mr. Chairman, I do not have the draft affidavit, so I cannot compare.

But clearly, it's designed to try to overturn the EPA ethanol requirement.

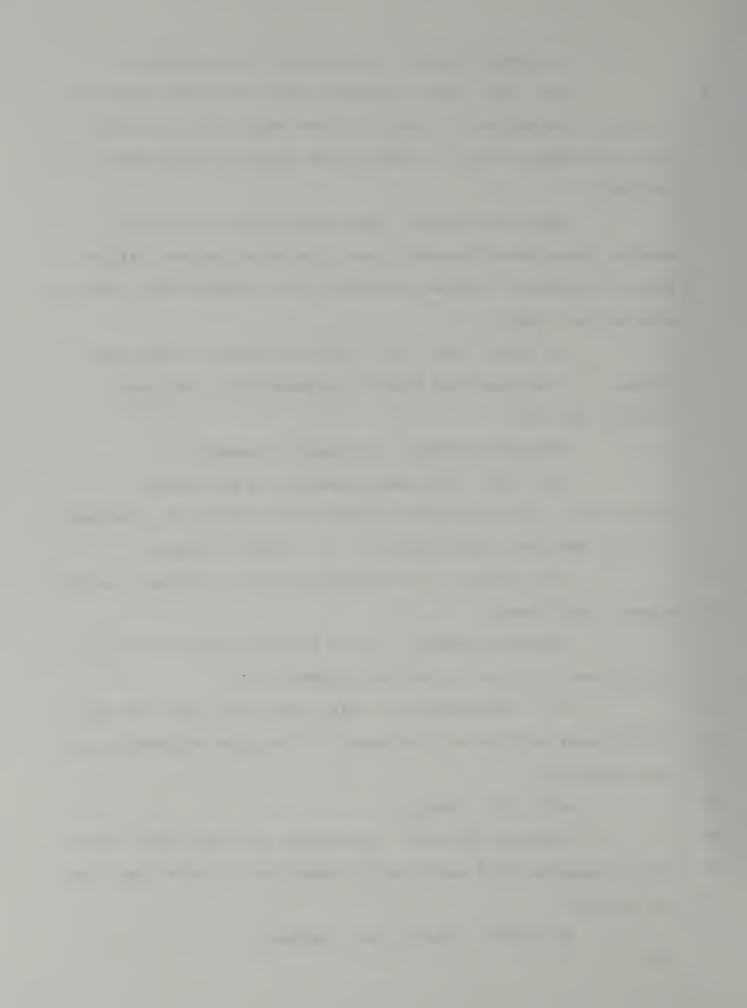
CHAIRMAN LOCKYER: It's a little confusing; it's a little hard to follow all of the document trail.

As I understand your point, you think that the agency collaborated with the oil refiners in a way that was adverse to your industry.

MR. VIND: Clearly.

CHAIRMAN LOCKYER: And refused to comply with Public Record requests which would have allowed you to learn that that was going on.

MR. VIND: Clearly, Mr. Chairman.



CHAIRMAN LOCKYER: Is ARB involved in this?

MS. SCHAFER: The Air Resources Board staff did provide scientific information which was the basis for Mr. Strock's affidavit. And I was aware that a Public Records Act request had been made, and my guidance to the staff was to provide all documents in a timely manner. I think a seven-day turnaround is pretty quick, if in fact those are the dates.

MR. VIND: I agree.

MS. SCHAFER: That were, within the law, required to be turned over, and that was a determination made by our counsel's office. I certainly support what they've done.

Personally, I have not examined the documents that are all referred to here, but our intention was to comply with the Public Records Act request. We have nothing to hide. Our position is as I said it was. It's been a position that we've taken historically here.

I'd like to point out one thing. We don't think ethanol is a dirty fuel. Ethanol is not a dirty fuel, and pure ethanol in an automobile, or pure ethanol in a stationary boiler would be a very good fuel.

Our concern with ethanol is when it's blended with gasoline. Its volatility increases, and we have fuel -- an emissions penalty associated with that.

And I have met with Mr. Vind and representatives of his association, and we and Cal-EPA will work with them to create an ethanol-based industry in California for the proper applications of those fuels.

However, as I say, the way EPA wrote the renewable

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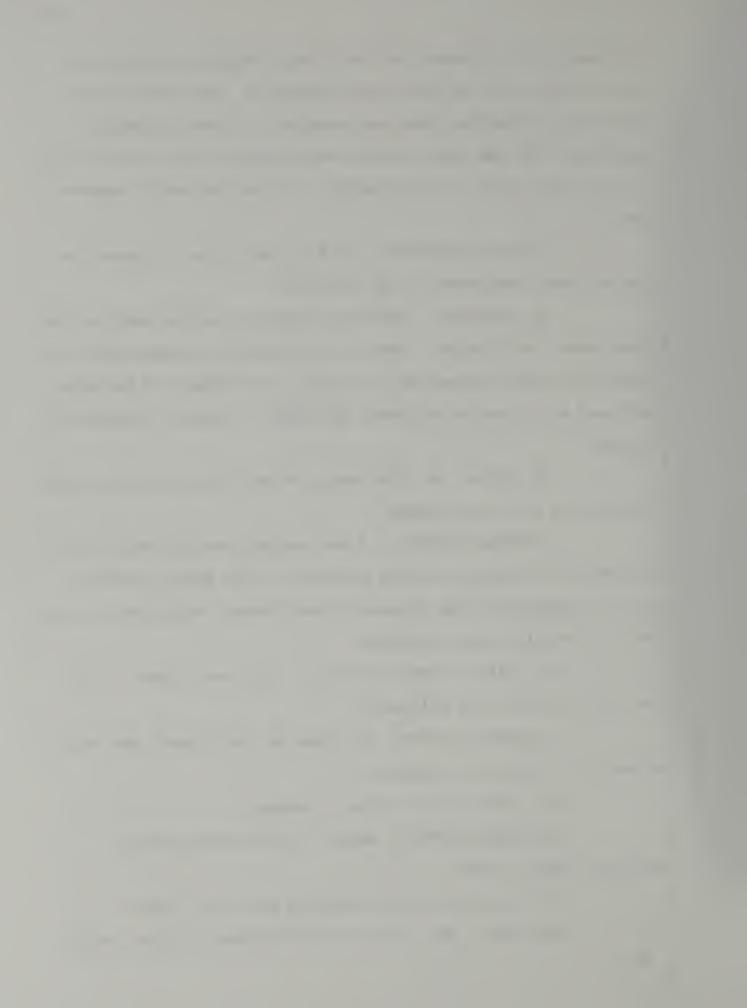


1 oxygenate rule, it penalized California from an air quality 2 point of view, and we could not support it. And that's the 3 technical information that was supplied in these documents. 4 Apparently the one that has not been supplied was a draft, and 5 I'm sure that that is quite proper, the way the staff handled 6 that. 7 CHAIRMAN LOCKYER: Mr. William Carter, I guess, is 8 the attorney that seems to be involved. 9 MS. SCHAFER: Assistant Secretary of Cal-EPA for Law 10 Enforcement and Counsel. However, our staff attorneys and our technical staff reviewed Mr. Strock's -- on behalf of Cal-EPA, 11 reviewed Mr. Strock's affidavit in order to find it technically 12 13 correct. 14 MR. VIND: Mr. Chairman, you will note on the Cal-EPA response to me, to my lawyer --15 16 CHAIRMAN LOCKYER: I was noting that Cal-EPA lists 16 documents that they providing pursuant to the Public Records 17 18 Act, but apparently the documents from Texaco, which would have been in the file, were withheld. 19 MR. VIND: That's correct. They were given to us, 20 but not listed on the affidavit. 21 22 CHAIRMAN LOCKYER: So, they're not listed, but maybe someone at the copying machine --23 24 MR. VIND: That's what I suspect. 25 CHAIRMAN LOCKYER: Well, I'm not sure what to 26 entirely make of that.

Did you want to add anything else, Mr. Vind?

MR. VIND: No, but Mr. Neil Kochler, I think, would

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like to testify.

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CHAIRMAN LOCKYER: Please, sir.

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MR. KOCHLER: Thank you, Members of the Committee. My name is Neil Kochler. I'm a partner in Parallel Products. We are an ethanol producer in California. We convert waste products in the food and beverage industry in Southern California to ethanol and other value-added commodities.

I'm also Director of California Renewable Fuels Council, which advocates on the behalf of not just ethanol, but other renewable liquid fuels in the state.

To put some of this in perspective, we did meet with Ms. Schafer shortly after she took her position to discuss some of the issues relating to ethanol, and it's a very complex issue. I don't want to go into all the technical issues, but just to put it in some perspective, the Legislature for ten years has supported the use of not pure ethanol, but ethanol blends that Ms. Schafer claims are causing air quality problems in California.

The Legislature most recently passed SB 1166, I believe, two or three years ago, which put the volatility exemption in the context of a performance standard that said in that bill that unless it was shown that ethanol blends increased the ozone-forming potential or nitrous oxide emissions of ethanol blends relative to other fuels -- unreformulated until '96, reformulated after '96 -- that the Legislature wanted to continue to support the use of this fuel.

No study since then has shown that we have an ozone-forming problem or NOX problems that has been funded by



the Air Resources Board. In fact, the most recent study, a low oxygenate study that was just released, had a very limited data set, seems to suggest quite the contrary. That, contrary to the conventional wisdom, that ethanol blends at low levels do not increase NO<sup>X</sup>, and that due to reactive benefits, it has not shown that there is an ozone problem.

So, we feel very strongly that we are still complying with the intent of the Legislature to market our fuel in such a way that maintains not only the status quo, but offers a better environmental solution to the reformulation of gasoline in California.

Because these issues are so critical, and there is an ongoing process to try to understand changing science, we met with Ms. Schafer to say we'd like to cooperate with you to do a modeling study that will try to put to rest some of these unresolved questions. We'll work with you to develop the protocols. We will all live by the results.

There, in a letter to me, has been a commitment to cooperate with us in that study.

So, you can imagine my extreme surprise and disappointment that -- when that -- that both CARB and Cal-EPA, while we thought we had the technical track to, in good faith, review the current science and to move towards the most environmentally beneficial use of our fuel, that suddenly, we're dirty, and that both CARB and Cal-EPA go on the record with extremely strong, misleading remarks about how our fuel will increase ozone, something that has not been shown.

And I think Secretary Strock, his affidavit refers to



our fuel as causing irreparable harm to the health of California citizens. Well, I feel very strongly today that his remarks and the remarks of CARB are causing irreparable harm to the growth of our industry in this state.

If we talk about economic growth opportunities, I know I applied the Chairwoman's desire to try to find the balance between economic development and environmental protection, and that also is why we're shocked that this position has been taken, because there aren't any new oil refineries being built in the State of California.

We are at the cutting edge and at the brink of being able to convert a huge variety of primary end-waste products into ethanol in this state, and bring to this state tremendous new economic growth in jobs and industry. And that -- it's very difficult to strike a balance between economic development and environmental protection. We feel that we're the kind of industry that the State Air Resources Board should be throwing their arms around due to our ability to both provide clean air benefits and economic development.

So, we feel very strongly that we have not been dealt with in an even-handed manner. That while we are constantly being told that the state is fuel neutral, that given the comments that were made by the prior witness, and given this history that I've presented here, it sure feels that there is no fuel neutrality, and that, in effect, the oxygenate MTB produced by the oil companies seems to be the oxygenate of choice for the Air Resources Board for reasons that we cannot understand.

I also feel that we are in a a strong fight between



the major oil companies and the ethanol industry. The oil companies, major oil companies, for purely self-serving reasons, certainly reasons you cannot fault them for, do not want to see ethanol in their fuel because they do not produce it.

Ethanol is more of a radical fuel in that it is a decentralized fuel, and it does not fit into the typical control structures of the major oil companies. So they, even though we represent a very minor portion of the fuel sold today, the oil companies have spent many millions of dollars and time trying to keep ethanol out of their fuel.

It was extremely alarming to us to see California's environmental regulatory agency siding with the oil companies against our fuel. That does not seem to me to be fuel neutral.

We do not question the qualifications of Ms. Schafer. If she were confirmed, we would continue to work with her, but somebody has to be accountable for the activities that have surrounded the very unorthodox opposition to this rule.

This was an opportunity to bring our concerns public, and see if we can't find out what exactly is going on here.

Thank you very much.

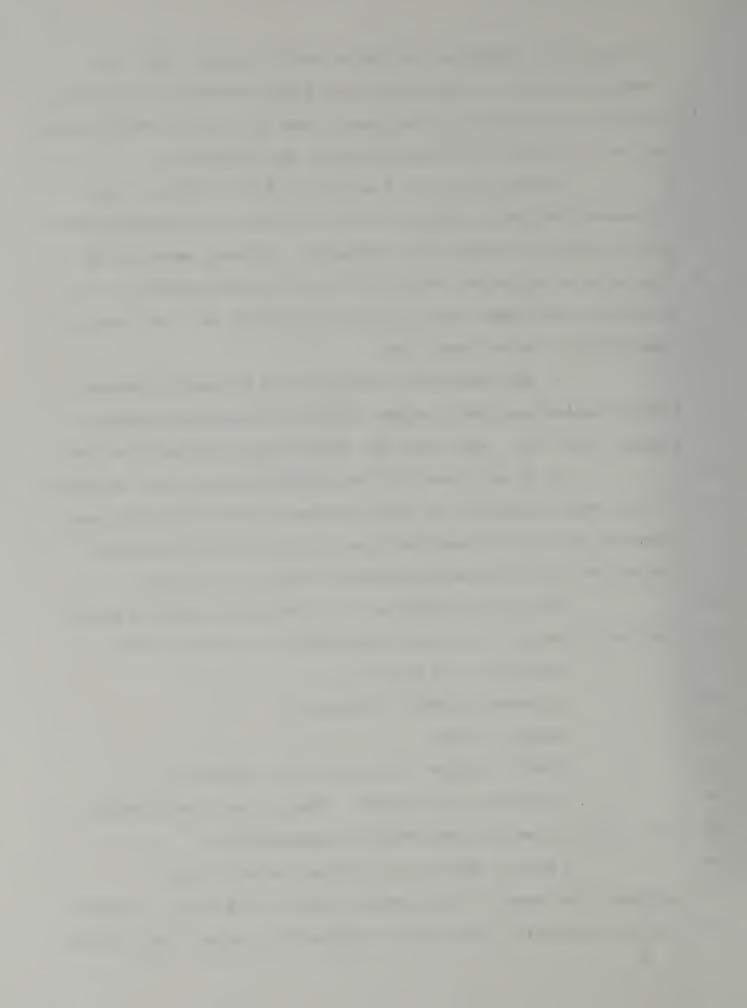
CHAIRMAN LOCKYER: Thank you.

Senator Craven.

SENATOR CRAVEN: Thank you, Mr. Chairman.

I enjoyed your remarks. They're very, very cogent, certainly, as was the gentleman who preceded you.

I have a feeling that either you or I have misunderstood some of the comments made by this lady. I didn't get the impression that she was opposed to ethanol. As a matter



of fact, I recall when she said words to the effect that: we see nothing wrong with it, and it's good for this and good for that.

I think that what she said at some other time, perhaps close to those remarks, was: the thing that we're concerned about is its volatility when combined with gasoline, which creates a problem from its burning, exploding, whatever.

That's the way I recall that. Now, maybe I'm wrong on that, and if I am, you correct me.

But she didn't give me the impression that they wanted to do away with it completely. I don't see how that they could maneuver, sub rosa or any other way, with the oil companies against your product. Wouldn't that be a conspiracy which could be, you know, challenged under the law, and a violation of the law?

Now, tell me if I'm wrong in what I've said. I've been out where they produce ethanol. I know a little something, very little, but I do know something.

MR. KOCHLER: My basic response would be that it is true that the Air Resources Board and the Energy Commission have supported the use of ethanol used pure in engines. There is no controversy as to the significant air quality benefits.

There has been or there are controversies surrounding the low level use of ethanol in gasoline. There is a strong volatility increase when you use small amounts of ethanol.

What is not stated anywhere in the public documents, either the testimony to the docket on the part of CARB to EPA commenting on the renewable requirement, or in Mr. Strock's



affidavit, is that there are three or four other benefits in terms of reduced tail pipe emissions, lower reactivity, lower carbon monoxide, all of which when looked at as a whole, appear to at least reverse the increase in volatility, if not produce cleaner fuel than the alternative.

That is why the Legislature, in their wisdom, passed SB 1166, which holds us to this performance standard.

Granted, it gives us an exemption which we need to blend our fuel in gasoline to be commercially viable because the oil companies will not produce a tailor-made fuel out of ethanol.

If it is shown that we do increase ozone, if we do increase NO<sup>X</sup>, relative to the next fuel, then we lose our RVP exemption. The Board has not made that demonstration, so why would they then be going public, saying that we are increasing ozone in California? There's a discredit there between --

SENATOR CRAVEN: You know, when you were stating the assets of the product, I'm willing to buy that. I have no problem with that at all.

But one thing that I forgot to say was the fact that it was said that the use of ethanol in the gasoline situation not only has a volatility problem, if you will, but also that which it produced into the atmosphere was something that would cause the agency, if you will, to be fined by virtue of what it produces, so that they would have to really, if they chose to let it go, they would suffer by virtue of a penalty from a higher authority, presumably the feds.

MR. KOCHLER: Well, if this is the fed rule, then the



fed went to great extents to ensure that the use of ethanol in the renewable rule would not cause such a problem. And all such provisions in the renewable requirement that went way far beyond what was needed to ensure --

SENATOR CRAVEN: I think I've caught you on a day when you like the feds. However, I wonder if you always feel that way with the regulations under which you must live, which must be very onerous at times.

MR. KOCHLER: Certainly.

SENATOR CRAVEN: So, in other words, it's kind -MR. KOCHLER: We're just asking for a fair hearing.
SENATOR CRAVEN: That's what you should have.

MR. KOCHLER: We feel that through the politics of this particular issue, that a very promising new industry in renewable resources in California has been unfairly treated.

SENATOR CRAVEN: Have you spoken to Ms. Schafer about this?

MR. KOCHLER: There have been -- most of the -- we've had two meetings with her. Most of the recent problems have been associated with statements from Cal-EPA. It's been frustrating because we've approached people both at the California Air Resources Board and Cal-EPA, most of whom distance themselves from the remarks of Mr. Strock. It's been hard to find who really wrote the affidavit.

That's been part of our frustration, because there were some statements that were made by Secretary Strock that, I feel very strongly, go far beyond what the technical analysis provided by CARB staff would support.



SENATOR CRAVEN: I appreciate your candor and thank you very much.

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MR. KOCHLER: Thank you.

SENATOR CRAVEN: I'll take the liberty of having you come up to testify in the absence of our Chairman, who probably will return very shortly. He's trying to work both sides of the street, running the House as well.

Please state your name.

MR. WHITE: Mr. Chairman, Members, my name's John White. I'm representing the Sierra Club.

I regret that I'm here today to oppose the confirmation of Ms. Schafer as Chair of the Board.

Before going into my reason, I would like to clarify that, for the record, if we want -- we won't have too much further discussion about ethanol -- that the environmental community in Washington was, I think, largely opposed to the mandate, which was the subject of the lawsuit. So, in this case, there was agreement. Not often is that the case between the oil companies and the environmental community with respect to that mandate.

That's not what I came here to talk about, but I did feel that in light of the earlier discussion, it was important that we make clear that while we have disagreements with Ms. Schafer on some things, this is not among them.

Our concerns are primarily with the lack of performance in the agency since Ms. Schafer's appointment. We have found her to be accessible, and personable, and qualified in terms of her background. But we are troubled by the trends



that we've seen, particularly in recent weeks, of a preference for avoiding some of the key responsibilities that need to be undertaken.

Senator Ayala's questions earlier about the truck smoke enforcement suspension, I think, are illustrative of that concern.

Also with respect to the FIP, I think that the contrast we would have -- we would point to is, even though we were on the other side of the Legislature's proposed compromise with EPA on smog check, unlike in the case of the FIP, the Legislature and the administration did propose an alternative to what they objected to the EPA proposing. And until today's hearing, we really hadn't had an indication that the administration was prepared to propose a detailed response to the Federal Implementation Plan. And that's crucial because the things that are in that Federal Implementation Plan are things that would be onerous for California, and we believe that the primary mechanism for avoiding that confrontation with the federal government is by actions of the California Air Resources Board.

There's been references to the number of efforts under way to develop alternatives. The silence from the Board in respect to those efforts has been deafening.

We also are troubled, having, I think, witnessed the strong leadership over the last 20 years through multiple administrations, going back to Ronald Reagan's time, the Air Resources Board has been a leader. Senator Petris had a bill, as I recall, that got us all started down this road with an



effort --

2 SENATOR PETRIS: Up this road.

MR. WHITE: Up this road, and we've had bipartisan support. We have had good strong technical leadership.

But what's been lacking, I think, in the recent months of this administration is the degree of independence that this agency has enjoyed over its history. We are troubled by the interventions, regular intervention, it appears, with Cal-EPA. We think that the rhetoric on the FIP that the Governor and Secretary Strock have been evincing is not helpful, and it, I think, makes the Air Board's job more difficult.

And we appreciate the Committee's questions that have been asked. We think they're helpful, and we believe that there needs to be some clear signal that we're going to move towards collaboration and the resolution of these issues, because they're too important to be allowed to continue.

We would like to associate ourselves with some of the earlier remarks of witnesses lauding the continuation of the electric vehicle mandate. We think that was important, but what we really think is that the heavy-duty vehicle standards and off-road vehicle standards, which are at the heart of the FIP, need to get the same priority that the electric vehicle program has gotten, and it hasn't been the case. So, we're troubled by that.

Those are my remarks.

SENATOR CRAVEN: Very good, Mr. White.

Let me ask a question, if I may. I realize that the Sierra Club is a very vast organization with tremendous



membership.

Do they have someone with technical expertise in the field in which we are speaking to advise them as to the negatives or the positives in anything that you are talking about?

MR. WHITE: Yes, we have --

SENATOR CRAVEN: Do you know? I mean, are you a technician?

MR. WHITE: Only by rote, I think. I have worked on these issues for some time. I'm not --

SENATOR CRAVEN: I'm not implying that --

MR. WHITE: Oh, no, and there are people with whom I converse on a regular basis, and who the Board -- for example, the volunteer leadership of the Sierra Club with whom I was consulting on this particular issue includes physicists, chemists, scientists, as well as advocates. So, I think we bring a degree of commitment to these issues, but we also have issues where we disagree.

We disagreed with the previous Board Chair from time to time, and in other administrations we've had occasional disagreements.

I think our concern here is that a pattern has begun to emerge that we find troubling.

SENATOR CRAVEN: I can understand that. You're entitled to your opinion, as I am mine.

When I hear Sierra Club, I think of trees. They have nothing, to me -- well, maybe they do have something to do with clean air, come to think of it, but that's a rather tenuous tie,



is it not?

MR. WHITE: It is, Senator Craven. However, we have also been involved with almost every major air quality issue in this state over the last 20 years.

SENATOR CRAVEN: That's fine. That's to your credit. But endorsement is not necessarily knowledge.

MR. WHITE: Indeed, indeed.

SENATOR CRAVEN: Very good, fine. Let's have lunch someday.

Anyone else? Yes, Senator Petris.

read his letter dated today, which I think for the Sierra Club is unusually deferential to people who've been traditionally opposed to our air pollution control program in their nearsightedness in treating it as a 100 economic issue, particularly under Governor Deukmejian. He felt that it wasn't any business in the state that could ever do any wrong at any time, and therefore, any bill that tended to offer some kind of regulation and correction was anathema and he vetoed them, time after time. That was his pledge in the campaign.

However, he also, under his tenure, did some good things. I think your letter should be viewed in that context, because you are giving credit to him and to Governor Reagan.

Let me just quote in part that you're troubled because Ms. Schafer, according to the view of the group, has not maintained that independence and the bipartisan spirit that prevailed prior to her, where other Chairs had been appointed by conservative Republican governors.



You're contending, and I'm quoting now:

"She has not maintained the tradition of independence and scientific excellence which, since Ronald Reagan's time, has been the source of the Air Resources

Board's bipartisan support and worldwide reputation in the control of vehicular emissions and developing advanced technologies. Instead, she's become an instrument of unprecedented politicization of California's air quality problems by the Wilson administration."

I gather from that, you're claiming there's a major change of direction in the policy, unprecedented, which did not occur under the prior conservative Republican governors who, although they may have disagreed, we all know they disagreed to some extent, they felt that the mission of this Board was so important to the health of the people of California in order to maintain air quality, that they kind of kept their hands off. And they appointed people who maintained an independence, and who followed the mission of the Board as set forth in the statute that created it.

Does that summarize your position?

MR. WHITE: That's correct, Senator. It is with some reluctance, because we have found, again, things to like about Ms. Schafer, and have not found her unapproachable. But we have felt that there has been a transition and a change from the previous history, and we felt that was grounds for making this



view.

SENATOR PETRIS: Thank you.

SENATOR CRAVEN: Thanks, John.

State your name, please.

MR. MARKIN: Mr. Chairman, Members, my name is Tom Markin, Director of California Governmental Organizations for ARCO.

I'm sorry for testifying out of turn. I'm not opposed to Ms. Schafer's confirmation, but I felt it appropriate to discuss the oil industry's side of the ethanol controversy that folks have tried to surface today.

SENATOR CRAVEN: Fine, if you can do it without making it too lengthy.

MR. MARKIN: Absolutely.

What is at issue is whether or not California should comply with the federal EPA's mandate on ethanol use in gasoline in the winter time. We are required to use some compound to boost the level of oxygen in the winter of our gasoline so that it will be lower in its emissions of carbon monoxide, and we've been doing that for a couple of winters now.

ARCO has used both ethanol-based and methanol-based additives. We appreciate the flexibility provided in using both types because it allows us to buy this additive at the lowest price possible. Therefore, our gasoline can be sold at the lowest price possible. That's ARCO's market niche, and that's why people go and buy their gasoline at ARCO.

So, we opposed the mandate that a fixed percentage of that oxygenate be ethanol-based fuel. We prefer to be fuel



neutral, and we truly see a need for that neutrality. And I know you've heard that term used a lot today, but in our minds what that means is that the Air Board's setting standards for the composition of gasoline, and then allow the industry to use the components that they can to make that standards as cheaply as possible, because that's in the best interests of the driving consumers of California.

So, when we say we want these rules to be fuel neutral, that means set a standard and allow the market to determine the components that go into that fuel.

The Air Board scientists have calculated that the incremental emissions of using ethanol per the U.S. EPA standard would be 20 tons a day volatile organic emissions. We have no reason to question those calculations. In fact, I believe our scientists would concur that there are additional emissions associated with the statewide use per the U.S. EPA standards.

Ethanol is taxed differently than methanol-based fuels, and there is another calculation that says the state would lose approximately \$60 million annually in gasoline tax related revenues. That is another reason for the administration to be concerned about enacting this type of policy.

But we applaud the Air Board's application of a fuel neutral policy on oxygenation. We think it was the right decision. We think it meant that the cleanest gasoline is going to be made available in plentiful quantities, at the lowest price, with fair tax treatment. We see nothing wrong with CARB adding in quantifiable numbers onto an American Petroleum Institute lawsuit to try to get the EPA to reconsider this rule.



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So, I think if you cut through some more rhetoric, they're doing it to make sure we can buy clean fuel, enough of it, and at the lowest price possible.

SENATOR CRAVEN: Fine. Senator Ayala, did you have a question?

SENATOR AYALA: I didn't have one, but I wanted to clarify a point that I think he said.

He said let the marketplace determine the different ingredient that goes into our fuel, or something like that?

MR. MARKIN: Yes, Senator. The specification is how much oxygen must be in gasoline in the winter, and there's a minimum amount that must be in there. We can use a number of different materials to achieve that. One is called MT ethanol.

SENATOR AYALA: Regardless of the health risk involved?

MR. MARKIN: I don't --

SENATOR AYALA: Because we don't want to pollute the air, and if you use certain fuels, it doesn't make any difference what the health risk is as long as the marketplace determines what different fuel you're going to use?

MR. MARKIN: The health risk at target, Senator, is the carbon monoxide emissions when you burn this fuel. In the winter, that's more of a problem because of atmospheric conditions. So if you add oxygen to the fuel so it can burn more completely, so that you wind up having lower carbon monoxide emissions, and many of these additives will achieve that.



the marketplace should determine the different ingredients, and to heck with the health risks involved. I think that they should determine if the health risk is within its affordable uses and that people can live with that. I don't think they can just let them go and let the marketplace and economy decide whether they use any kind of fuel or not, specially in my district, which is part of the most polluted area in the country.

MR. MARKIN: Senator, regardless of the oxygenate used, the tail pipe emissions are relatively the same.

What is at issue is, when using ethanol, sometimes the evaporative emissions from the fuel system may be greater than if we had used a methanol-based additive.

SENATOR AYALA: Okay, thank you.

SENATOR CRAVEN: Senator Petris.

SENATOR PETRIS: I'm interested in the comment about the marketplace. We hear that a lot up here. Industry doesn't like us get in their hair, so they say: let the market do it.

If the marketplace were working the way you content, there wouldn't have been one statute in this field. As was pointed out early on, I've carried a lot of legislation relating to air pollution. At that time, the industry said there wasn't any problem. The oil industry came in and said, sat where you're sitting, and said there's no problem. The automobile industry said there's no problem.

Finally, when the scientific evidence came in, and the number of deaths were calculated, especially in Southern California, including Senator Ayala's district, they said,



"There is a problem, but we're not contributing to it. It's not our problem."

And that way, they buy time, and they buy time. They keep the government away, and get another year, two years, three years. Finally they say, "Well, apparently there is a problem, but we should solve it, not you." So that buys them another three years, and more people die.

I find that attitude unacceptable. I think it's arrogant. I think it's insensitive. I think it reflects a great deal of greed.

Now, I'm not talking about you personally. I realize you're the guy here speaking on behalf of some people.

But if the marketplace worked the way industry contends, when my bill went in, there would have been a mad rush to be the first company to clean it up, clean up the fuel, and then say to the public, "Hey, we're not selling this dirty stuff that Petris is hacking at us about. We're selling the clean stuff." And those companies, or that company, would have made a fortune in doing it and got a tremendous amount of good will, and the others inevitably would have had to follow.

But we didn't see that. We didn't see that. They didn't see the competition. We saw a unanimous position by all the companies, just like you drive down the street go to a station, the chances are it doesn't matter which station you go to from the standpoint of the consumer's cost, gasoline's the same price. The variation is very, very little until there's some kind of a gasoline war and somebody breaks ranks, and that lasts a short time, then they go back to the prior.



So, I get very nervous and skeptical when I hear: well, the marketplace will take care of it. We've had so many problems that could have been solved without our interference. And some people in the private sector think we're whistling around here, figuring out ways to jump in, to interfere.

We'd rather stay out. It's that attitude that drags us into the fight. For God's sake, how long are we going to have senior citizens dying of heart disease aggravated by air pollution in the L.A. Basin? That's why we went in.

I put the first bills in because doctors asked me to do it, my own personal physician and a lot of public health doctors. They pointed out to me that the fastest rising health menace in California at that time was due to air pollution.

Why should we have to jump into that? Why couldn't the industry take care of that? They didn't give a damn, that's why. They were in a state of denial for so long that we were compelled.

I remember Rumford way before the name was famous.

You know, he was a pharmacist, and he knew something about health. He was Chairman of the Public Health Committee, and he was the first one who started whittling away at that before I ever got up here.

Anyway, I just wanted to explain my reaction to kind of inviting us to turn everything over to the competition in the marketplace. It's just not going to happen.

MR. MARKIN: Senator, I hope you understand, let the marketplace decide is related to the additive that we use in the winter to our gasoline to achieve the standards set by the Air



Resources Board, and we have a couple of choices on what type of material we use. They'll all meet the standard.

What we desire is the choice to choose among those alternatives so that we don't have to unnecessarily pass along the cost in our product.

SENATOR PETRIS: Even on that, are you talking about the ROR, and what happens in the winter months?

MR. MARKIN: Yes, sir.

SENATOR PETRIS: The only report that came out of the Board was way back in 1987, and they talked about the summer effects. They didn't say anything about any problem in the winter. And they were supposed to have studied this. Maybe they did, I don't know, but their report doesn't reflect it.

MR. MARKIN: I'm not the one that did these numbers, but I believe that, based on the last two winters, we've seen a real good improvement in the carbon monoxide emission in the air, in some part due to the programs.

It's an effective program --

SENATOR PETRIS: I hope so.

MR. MARKIN: -- and we're simply advocating that we be allowed to choose from a menu of additives.

SENATOR PETRIS: Thank you.

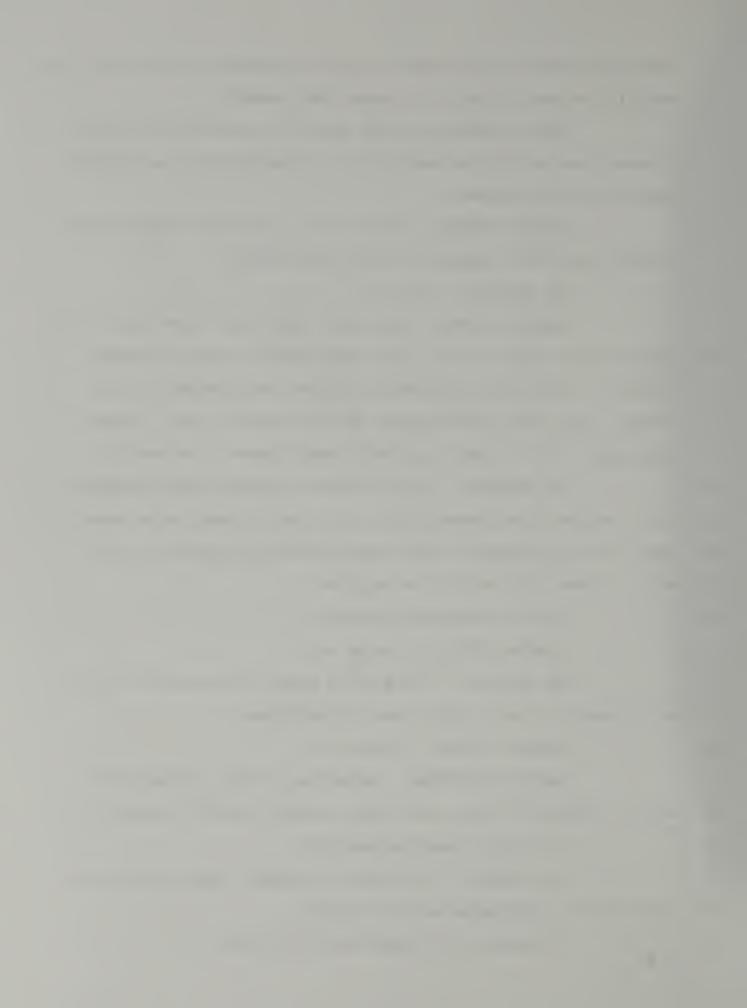
CHAIRMAN LOCKYER: Let me ask if there others who wish to comment? Anyone else that wishes to make a comment?

Are there Committee Members?

MS. GIBSON: We're here to support the confirmation.

Thank you for the opportunity to speak.

I apologize for speaking out of turn.



My name is Evelyn Gibson, and I represent the California Independent Oil Marketers Association.

CHAIRMAN LOCKYER: We heard from them earlier.

MS. GIBSON: Oh, you have, okay. We're somewhat disorganized today.

CHAIRMAN LOCKYER: Well, you're already on the record.

MS. GIBSON: Thank you very much.

CHAIRMAN LOCKYER: Thank you.

SENATOR PETRIS: Mr. Chairman.

CHAIRMAN LOCKYER: Senator Petris.

SENATOR PETRIS: I want to apologize for being tardy.

I'd like to ask the nominee about another field in which I've been interested for sometime, and that's pesticides.

The evidence is growing that pesticides and other chemicals used by agriculture are a major source of volatile compounds that contribute to the creation of ground level ozone, smog. The EPA at the federal level in the FIP plan estimated that they may contribute 10-15 percent of the VOCs in agricultural regions like Sacramento and the San Joaquin Valley.

If that's accurate, it's an extremely large source that's not currently regulated or controlled. I'm interested in the Board and your attitude regarding addressing this problem of pesticides. It seems to have been ignored by the Board.

I know there's a lot of things to worry about, and there's plenty to do. It's not like there's nothing to do.

I would appreciate some comment from you relating to the pesticide menace that we have in the agricultural areas of



the state.

MS. SCHAFER: Now that we have succeeded in reducing emissions from stationary sources and mobile sources, such as light duty vehicles, through the programs we've been discussing and implementing over many years, the remaining sources obviously now appear to be a larger percent of the contribution to the problem.

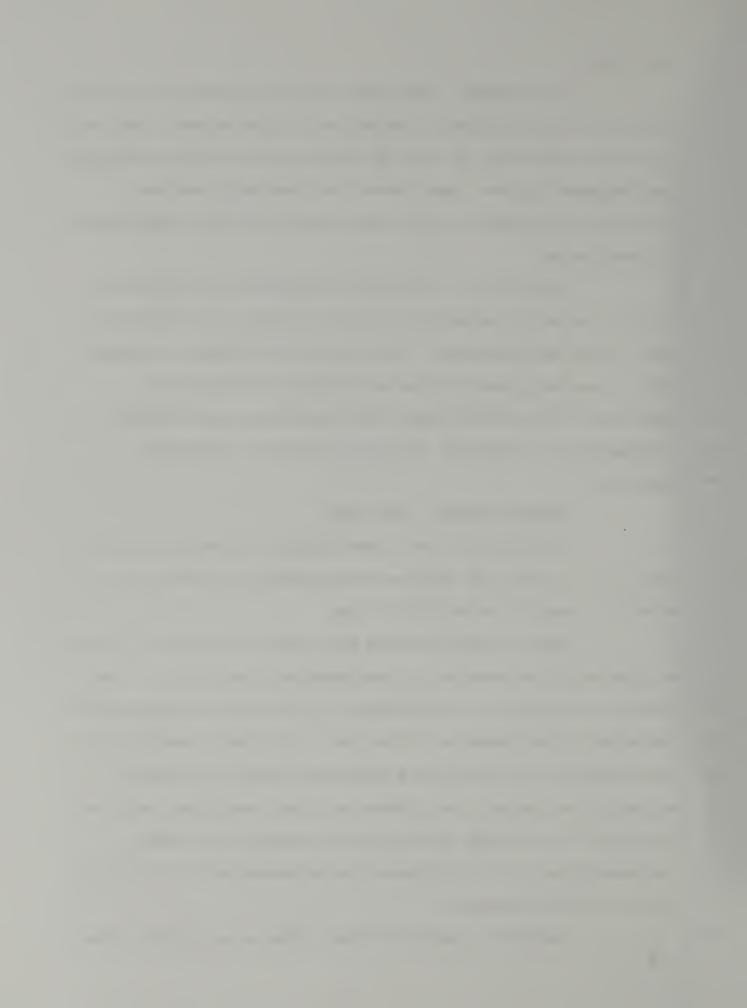
Certainly it's evident that pesticides containing volatile organic compounds could be a significant contributor that should be addressed. The EPA's plan proposes to address this in one way; however, we have been working with the Department of Pesticide Regulation even before the Federal Implementation Plan came to fore to develop a statewide regulation --

SENATOR PETRIS: How long?

MS. SCHAFER: It's been going on since last year at least, but I know that they've been meeting and are trying to develop a regulation for California.

One of the first jobs that needs to be done is to get an update on the inventory. The inventory that we have, the baseline information that we have, is a bit out of date because patterns of use change over the years. So, we're working with the Department of Pesticide Regulation, which has primary authority to regulate pesticides and their pesticidal use, in developing a statewide regulation with part of our State Implementation Plan and proposed to be forwarded to the EPA as one of the SIP measures.

The DPR is taking the lead, but we are giving them



significant assistance in trying to update the inventory and to develop a regulation that will achieve significant reductions, in the order of the 20-45 percent that EPA had identified, but do it in a way that will allow us to optimize the use of pesticides, particularly not to penalize those that may be used in a very small amount, but which may have a high VOC content. We're trying to come up with a program that will get the overall benefit, but do it in a way that doesn't disadvantage any one part of the agriculture community over another.

SENATOR PETRIS: So, I am to believe that you do have a plan, and you are attempting to address that?

MS. SCHAFER: Absolutely. It's being developing now, but we're trying to first update inventory information so that we can identify where this material is coming from.

But the regulation we would propose would go into effect in about the same time frame as what EPA was proposing, but this would be one that's drafted here in California.

SENATOR PETRIS: Did you do independent monitoring or studying of the EPA publications of the most hazardous pesticides?

By law, they're required to publish and go after those and try to eliminate. Last year, the Governor pulled off the list one of the most devastating of all. I don't remember the name of it. In fact, I've never remembered the chemical names for these things, having been totally ignorant about the chemical world except the impact it's having on our farmworkers and others.

Did your Board look into that, removal of that



particular pesticide when that was done? It was either last year or early this year.

MS. SCHAFER: I don't have any personal knowledge about that particular chemical.

As I said, the Department of Pesticide Regulation does regulate pesticides and their pesticidal use.

Our involvement would be if, after the use of this pesticide had taken place, to make sure that emissions are captured and not migrating to have an impact on the public health, and I know that our people would be involved to the extent that that might be a consequence.

SENATOR PETRIS: How do you do that? Can you walk me through that? Do you have inspectors roaming around the state?

MS. SCHAFER: Actually, the Air Board -- the authority for actually regulating pesticide as an air pollutant is, in California, perfectly reserved to the local district, the air quality management district.

However, we certainly provide technical information and guidance about developing regulations to deal with those as a general guide for consistency around the state.

SENATOR PETRIS: It comes under your general mission, doesn't it, of air quality?

MS. SCHAFER: Yes, sir, under our general mission, that's correct. But we do in California share responsibility with the local districts in this area and in the area of stationary sources.

On the flip side of that, our responsibility are the consumer products, for example, or the motor vehicles, the Air



Board takes the lead. So, that's a split responsibility.

SENATOR PETRIS: Whose scientists are there? Which scientists are primarily responsible for doing this? Is it the Division of Registration, is it the EPA, is it your shop, or is it a little bit of each?

MS. SCHAFER: It's a little bit -- the way the staffs work in California, there's a little bit of each, for those areas where we have primary responsibility, we do have scientists who are capable of looking at the air quality impact of pesticides after they are used.

SENATOR PETRIS: If I want to use -- let's say I've developed a new pesticide that I want to use in agriculture. I go to the Division of Registration, Pesticide Regulation and Registration. I have to get their approval, right?

Now, do you look into that at all, any of that process?

MS. SCHAFER: I don't believe that we have a responsibility in regulating the use of pesticides. First of all, under the federal law, EPA registers pesticides for use, so they have a whole scientific infrastructure for handling that as well.

However, if there is a pesticide, after it is used, released into the atmosphere, then we would have a concern, and we would have scientists working with the local districts on addressing those problems.

SENATOR PETRIS: So, the alarm, I guess, would be sounded by the local district in a given area. It wouldn't be primarily yours?



.  MS. SCHAFER: If it is -- yes, that's where the authority currently lodges, the way that we have written rules here in California.

SENATOR PETRIS: I understand you're very determined to make sure there's a proper balance between the economic interests that are involved and safety. Some of us critics sometimes have felt that the administrations have come down too quickly on the side of the economic interests and at the expense of the public health interest.

That's why I'm wondering, and that's why I'm asking these questions about just what does your group do compared to the others, and where do the scientists come in.

We've had some pretty bad episodes for awhile in which the Pesticide Regulations scientists, who were top-flight and admired by all who knew the program, had their recommendations reversed by another level, presumably on the economic issue. We felt at the time it was political pressures and responding to political friends.

So, we had some notable scientists who had worked very diligently to make certain that we were going in the right direction, and who would recommend in some cases that a particular pesticide be rejected: "We should not use this pesticide in California for the following reasons. Our tests show this, and this, and that."

The political guy upstairs would reverse that and say, "Go ahead and sell it."

About 18 of the scientists quit. They said, "Our mission has been totally undermined by the political side of the



administration."

So, the reason for my question is that I'm wondering if there are safeguards against any kind of repetition like that, because this administration has been more partisan in this area than the last one and the one before.

MS. SCHAFER: I'd like to confine my comments to those matters under the jurisdiction of the Air Resources Board. And so in my area, I can assure you that we have continued the tradition of staunch regulatory advancement of what we call technology forcing regulations to meet our air quality goals, and those are the health protective goals that underlie all of the standards.

I have no experience with any intervention in the decision making process of the Board. We have upheld our low emission and zero emission vehicle standards which we believe are the fundamental underlying reasons for the achievement that we have been able to have in the last 20 years of improvement in air quality in Southern California. Exposures in Southern California have been reduced 50 percent.

The issue before us now is how we're going to get the rest of the way there between now and 2010, which is the goal the Clean Air Act has set for us in Southern California. And the formula that we've found, and the Wilson administration supports it strongly, is one that is technology oriented, combining the vehicles and the fuels as a system, and being as encouraging of new technological advancement as we possibly can be.

And I think we have a strong foundation. I certainly



don't want to take credit for a lot of the regulations that have passed before my time, but I can assure you that I sill stand firm in pursuing the the standards with the best scientific and technical staff in the world. Everyone realizes that, and has acknowledged that, and has reminded me of that, that are lodged at the California Air Resources Board.

So, I think that we have the capability of reaching towards the rest of the work that needs to be done, and I'd like to pledge my cooperation with this Committee and the rest of the Wilson administration to see this through.

CHAIRMAN LOCKYER: We've heard, Senator, this particular slogan a number of times during the course of the morning: the technology driven solution. It sounds a bit like the magic wand that's going to help us avoid making difficult or unpopular decisions.

So, since the Senator began asking about pesticide rules, and I understand you had commented earlier on sort of the need to assess effective strategies, that there's the NO<sup>X</sup> side of the equation, there's the organic compounds side, and you're trying to assess the most efficacious approach.

If EPA, federal EPA, is right, that perhaps in our large agricultural zones that organic compounds resulting from pesticide emissions could be as much as 10 or 15 percent of the problem --

MS. SCHAFER: In certain areas.

CHAIRMAN LOCKYER: Yes. What have you done about that?

MS. SCHAFER: We're developing a regulation -- we're



ahead of where EPA would be in developing its regulation -- for the effective control of the volatile organic compounds that are found in pesticides.

CHAIRMAN LOCKYER: So this is another work in progress.

MS. SCHAFER: As EPA's is, yes, sir. This is an area which has not previously been addressed in either federal or state regulation.

But as we achieve better and better control of the traditional sources and the larger sources of air pollution, what we see emerging is the remaining sources. And that's our task before us, to plan for that, and then to work on that over the next 25 years, which is that attainment period Congress has given us.

CHAIRMAN LOCKYER: Other questions, Senator?

SENATOR PETRIS: Well, that leads to the basic question, who's going to be in control and in charge? Is it going to be the Department of Pesticide Regulation, which in the past, it's kind of evolved into a voluntary thing. The ARB isn't voluntary. When they say you've got to have a certain number of electric cars by a certain year, the only volunteers are going to rush out and buy the car now. But apart from that, it's a position of a mandate on the industry.

So, that's why I'm asking the questions. Are you folks going to really be in charge ultimately, in view of the history we've had in the other areas, the other agencies, or not?

MS. SCHAFER: As I said, the jurisdiction in



California is split among a number of authorities.

Because the Department of Pesticide Regulation has the primary responsibility for regulating these products in their use, they are taking the lead. We are working cooperatively with them, and they have pledged to produce a regulation over the course of the next year which we can then submit to EPA as part of the State Implementation Plan.

We fully appreciate that that's a practical way of handling the authority split on this issue, but I think they're going to get the VOC reductions that we require as a result of it, and therefore it's probably a very good way to go.

SENATOR PETRIS: My final point, Mr. Chairman, there's an impressive list of letters, strongly urging approval of Ms. Schafer's nomination.

What makes me nervous is, they come from the industry that's being regulated. If we've got a very vigorous enforcer, looking out first of all for the consumer's interest and the health, chances are those companies would be opposing such a policy.

So, that's why I have a little skepticism here and I'm raising these questions.

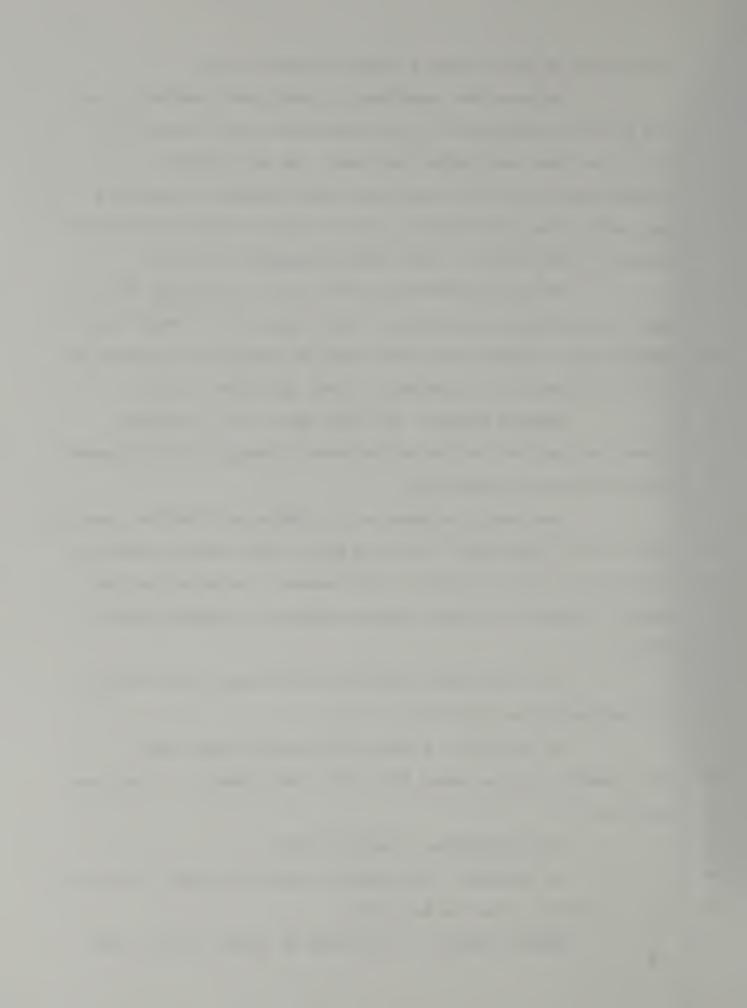
MS. SCHAFER: I hope that you will find some environmental groups among that list, too, Senator. I believe there are --

SENATOR PETRIS: There is one.

MS. SCHAFER: There are at least four that I'm aware of. I hope you have the full list.

SENATOR PETRIS: Only three or four? Better than

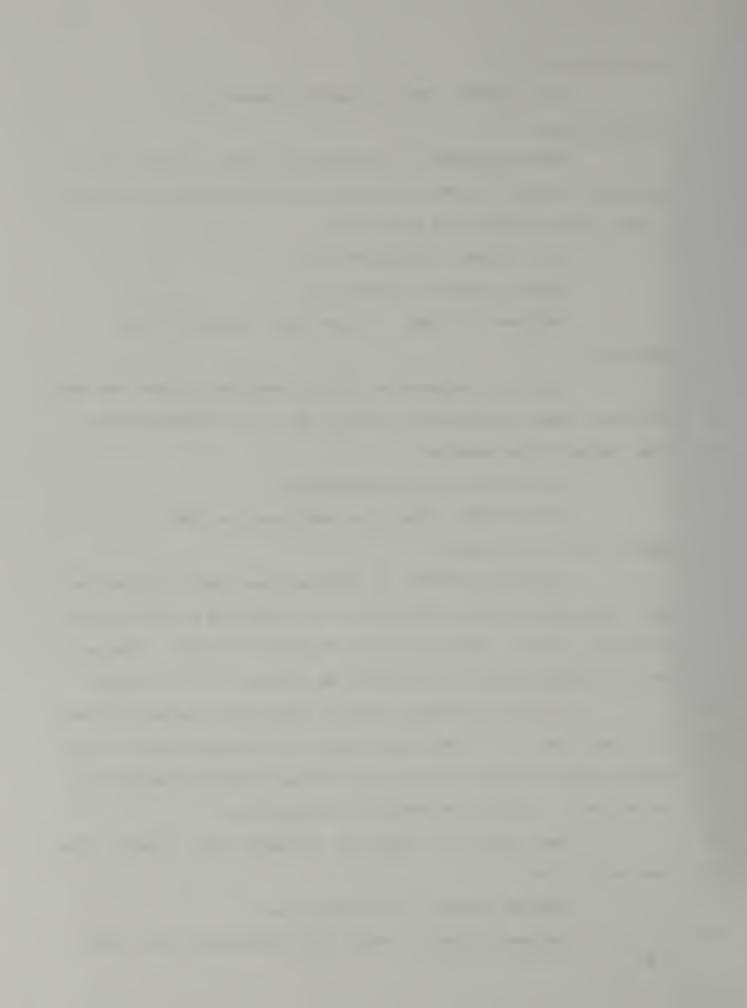
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1 nothing; isn't it? 2 MS. SCHAFER: They're pretty impressive 3 organizations. 4 SENATOR PETRIS: I remember one that I read is the 5 one that I've had a great deal of admiration for over a period 6 of many years, and that's a big plus. 7 Thank you, sir. MS. SCHAFER: 8 SENATOR PETRIS: Thank you. 9 CHAIRMAN LOCKYER: I quess we've heard all the 10 testimony. 11 Again, my suggestion to the Committee is that we take 12 the matter under submission, and act on it at an appropriate 13 time, later in the session. 14 Thank you for your assistance. 15 MS. SCHAFER: Thank you very much for the 16 opportunity, Mr. Lockyer. 17 CHAIRMAN LOCKYER: I think we have miscalculated how 18 much time these matters would take. I'm feeling a little like 19 the former chair. Everyone said, "Oh, this is great. You're 20 really whipping along, " and here I am, taking a lot of time. 21 I think we perhaps need to make sure that any witness 22 that came from out of town about any of the nominations that are 23 before us has an opportunity to get their comments inserted in 24 the record. I think that would be appropriate. 25 Then there's at least Mr. Flournoy who, I quess, came 26 from out of town. 27

SENATOR CRAVEN: Mr. Dunphy also.

CHAIRMAN LOCKYER: Well, he's around all the time, I



think.

I'm trying to figure out how to manage our time so that either a nominee or a witness from out of town can be heard. Ms. Edgerton would be, I guess, another on that kind of list.

Maybe what I should do is indicate that we'll hear comments on Mr. Flournoy, on Ms. Edgerton, and then any other witness that's out of town with respect to the other appointees, but we'll release all of those appointees so that you can go get some productive work done.

So, Mr. Dunphy and others, I apologize for the fact that we've been taking as long as we have. So, Mr. Dunphy, and Kozberg, and Sharpless, I would assume we would have to take up a different day. We're working on coordinating our calendars to find out when we could -- maybe in the mornings or something -- have an opportunity to do that.

Let me get back to Mr. Dunphy, Kozberg and Sharpless about the appropriate time to call them forward.

If there are witnesses from out of town relating to those, I think it'd be appropriate in a moment to get them on the record, if there are such, about any of the appointees. But we'll hear from the appointees at a different time.

Meanwhile, we'll go to Ms. Edgerton next, and then Mr. Flournoy, and that will probably be it for today.

We'll take a five-minute break and let Member go to the Floor, figure out what's going on there, and we should be back in a few minutes.

[Thereupon a brief recess was taken.]



CHAIRMAN LOCKYER: Let me inquire of those present, who is here to testify on the Edgerton nomination? For of those. How about Flournoy? Just checking on who's here.

Let's call Ms. Edgerton to come up. Iron City Fishing Club.

MS. EDGERTON: Is that the first question?

CHAIRMAN LOCKYER: I'm curious as to what it is, but you'll probably tell us.

Why don't you go ahead and start with any general comments that you would wish to make.

I'll note that I don't think there's any opposition in our file.

MS. EDGERTON: Thank you, and thank you for staying late today to let me get finished so that I can go back to Los Angeles.

Mr. Chairman, Members of the Committee, I thank you for the opportunity to appear before you in connection with senatorial consent to my appointment to the California Air Resources Board.

It's been a great honor and a privilege to serve for the last nine months as a member of the California Air Resources Board, and under the outstanding leadership of Chairwoman Jacqueline Schafer.

My principal interest in connection with my service on the Air Resources Board is to work with the Legislature, California business, environmental groups, citizens, all concerned with clean air, to achieve steady environmental and economic progress for our state.



Prior to joining the Resources Board, I served as

Vice President of Cal-Start, a California nonprofit consortium

encouraging the development of an advanced transportation

technologies industry in California. As you know, California's

mission is to clean the air, create jobs, and increase our

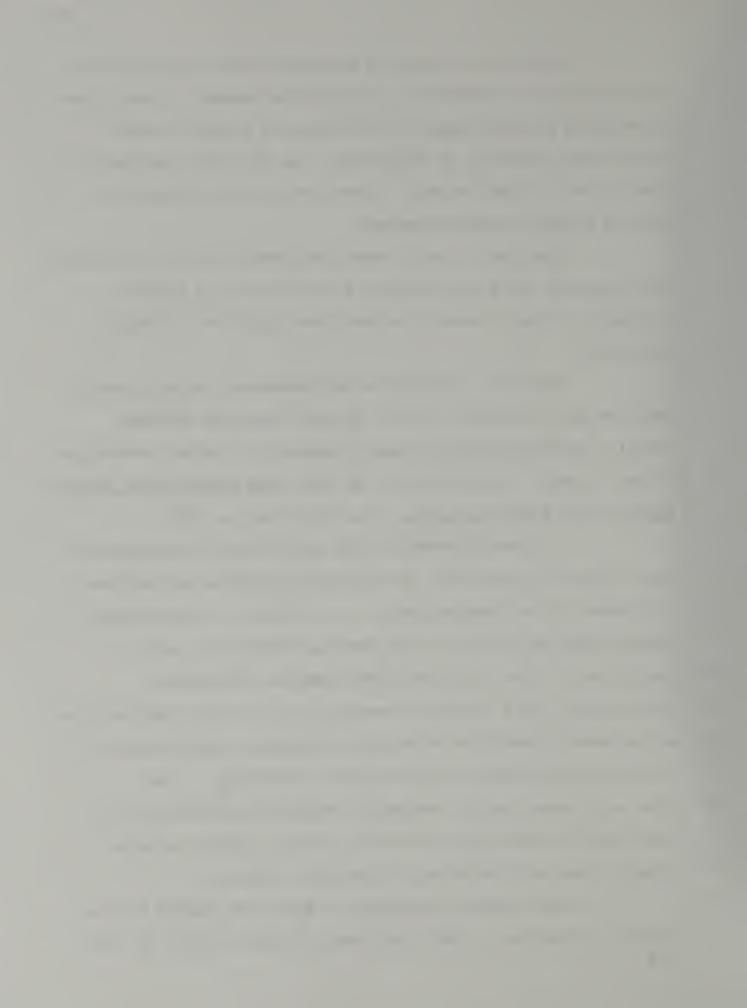
state's economic competitiveness.

This fall, I will teach environmental law -- co-teach environmental law with Professor Larry Berg as an adjunct professor in the University of Southern California's Unruh Institute.

Formerly, I practiced environmental law as a senior attorney and consultant for the Natural Resources Defense Council, specializing for almost a decade in coastal protection, climate change, and clean air. My book, <u>The Rising Tide, Global Warming</u>, and World Sea Levels, was published in 1991.

I currently serve on the board of the Environmental
Law Institute, Green Seal, the Climate Institute, and Mothers
and Others for a Livable Planet. In addition, I am alternate
commissioner of the California Coastal Commission, and a
participant in the California Environmental Technology
Partnership, and I formerly served on the Fuel Cell Subcommittee
of the Select Committee of Project California, which is part of
the California Council on Science and Technology. I am
especially committed to working to establish California as a
home base for fuel cell technology, which I expect to be a
premier clean air technology in the 21st Century.

Since joining the Board, I have been guided by the explicit directives of both the federal Clean Air Act of 1990



and the California Clean Air Act, which directs the ARB to adopt measures to secure healthy air for Californians, and I quote, "as expeditiously as practicable."

During this period, the Board, under Chairwoman Schafer's able leadership, has, among other things: reviewed their low emission vehicle clean fuels program, which provides for the introduction of low and zero emission vehicles to clean our air and to help meet federal and state clean air requirements; reviewed phase two of the reformulated gas program, which provides specifications for the world's lowest polluting blend of commercial gasoline in the world; adopted measures to reduce emissions from off-highway recreational vehicles; revised evaporative emission standards; approved the South Coast Air Quality Management District's regional clean air incentive market reclaim; and worked on California's efforts to meet Clean Air Act requirements by developing the best possible State Implementation Plan.

In closing, let me thank you for your legislative leadership on clean air and the economy, and express my desire and commitment to working with the Legislature to achieve our shared goals.

I want to add that it's been a great privilege to serve on the Air Resources Board with Jacqueline Schafer.

Chairwoman Schafer and I came on this Board together, have greatly enjoyed working together, and have, in my view, accomplished much to assist California in attaining and maintaining its high environmental air quality standards.

Thank you.



CHAIRMAN LOCKYER: Thank you.

Are there questions? Senator Ayala.

SENATOR AYALA: I have to ask you the same question I asked your boss.

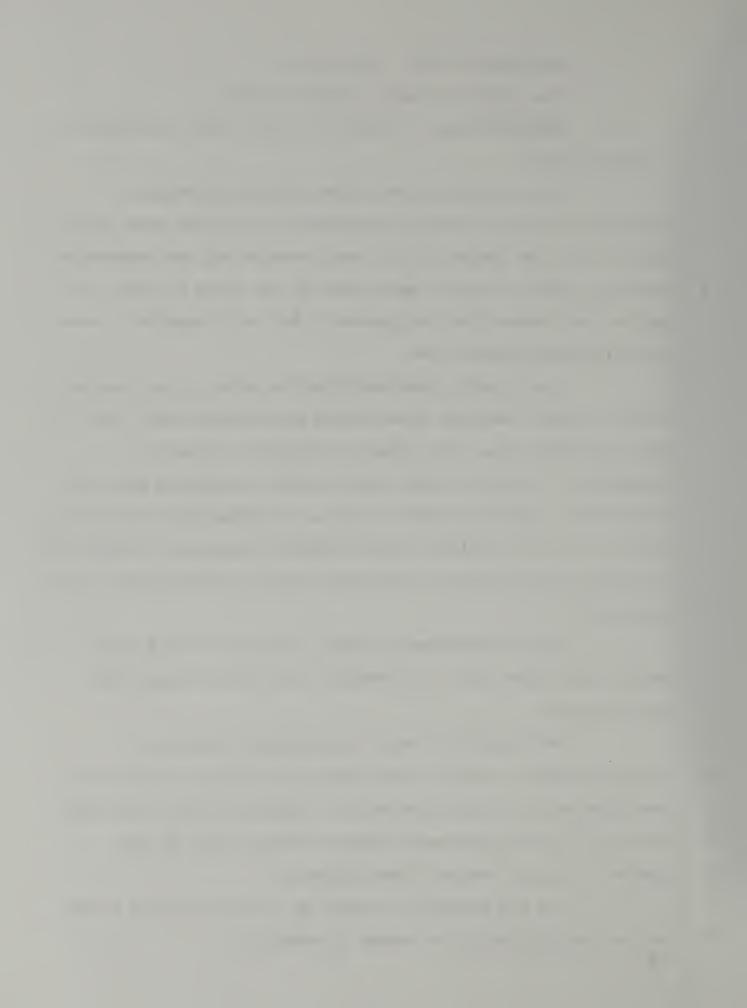
Are you familiar with Mayor Richard Riordan's proposal to replace pollution controls in the urban area of Los Angeles, and get tougher up in the Riverside and San Bernardino Counties, where we're the recipients of the dirty air that Los Angeles and Orange Counties produce? Yet, he's pushing it over to us for more restrictions.

I was really surprised that he wants to put controls on dairy farms, and dust from farming and construction, when in the Los Angeles area, the biggest pollution is from the automobile. You know, given that the ARB's concerned with the automobiles, and the district board is concerned with stationary sources, are you familiar with the Mayor's proposal to shift the curtailment of pollution in the other counties when they are the producers?

We're downstream polluters, really, but the main source comes from those two counties. Are you familiar with that proposal?

MS. EDGERTON: Yes, I am familiar from the standpoint that I know it's been made, and I know that the Air Resources Board is participating in a task force with the South Coast Air Quality Management District and the City of Los Angeles to try to sort out that proposal.

I'm not prepared to speak to it today because I have not had the opportunity to study it carefully.



1 SENATOR AYALA: You have no position on it at this 2 point? 3 MS. EDGERTON: No, I don't. 4 SENATOR AYALA: Thank you. 5 CHAIRMAN LOCKYER: Well, it sounds like something 6 worth finding out about. 7 It certainly does. MS. EDGERTON: 8 I live in Los Angeles, and the air quality of Los 9 Angeles is of paramount interest to me, and I'm aware that the 10 wind blows from the ocean and pushes the air pollution into the 11 east. 12 CHAIRMAN LOCKYER: We've noticed that in the 13 Legislature, too. 14 MS. EDGERTON: I've seen the mountains disappear in 15 the late afternoon. 16 CHAIRMAN LOCKYER: Are there other questions from 17 Members? 18 Why don't we just acknowledge for the record those 19 that have appeared in support. If you want to put your name in 20 the record, we can, but I have a feeling we're looking at a 21 unanimous vote here, unless you figure out a way to undo it. 22 MR. ROSS: I am Tommy Ross, Southern California 23 Edison. 24 We'd just like to say that we've found Ms. Edgerton's 25 professional, educational and academic background, including her 26 experience at Cal-Start, and we believe she's imminently 27 qualified to continue her work on the Air Resources Board, and 28 would continue to urge you to approve her nomination.



CHAIRMAN LOCKYER: That was longer than necessary.

[Laughter.]

MS. JONES: I'm Victoria Jones with Southern California Gas Company.

We, too, are here to speak in support of Lynne Edgerton for a member of the California Air Resources Board and would urge you to confirm her appointment.

CHAIRMAN LOCKYER: Thank you.

MS. MARTIN: I'm Cecile Martin of the California

Electric Transportation Coalition, and I'm here representing the state's major utilities, both gas and electric and gas utilities.

We're here to support the confirmation of Lynne

Edgerton. We've found her to be a very active member of the Air

Resources Board, and we find her perspective very valuable.

Thank you.

CHAIRMAN LOCKYER: Thank you.

MR. HOSSEPIAN: My name is Gorik Hossepian with Allied Signal Aerospace.

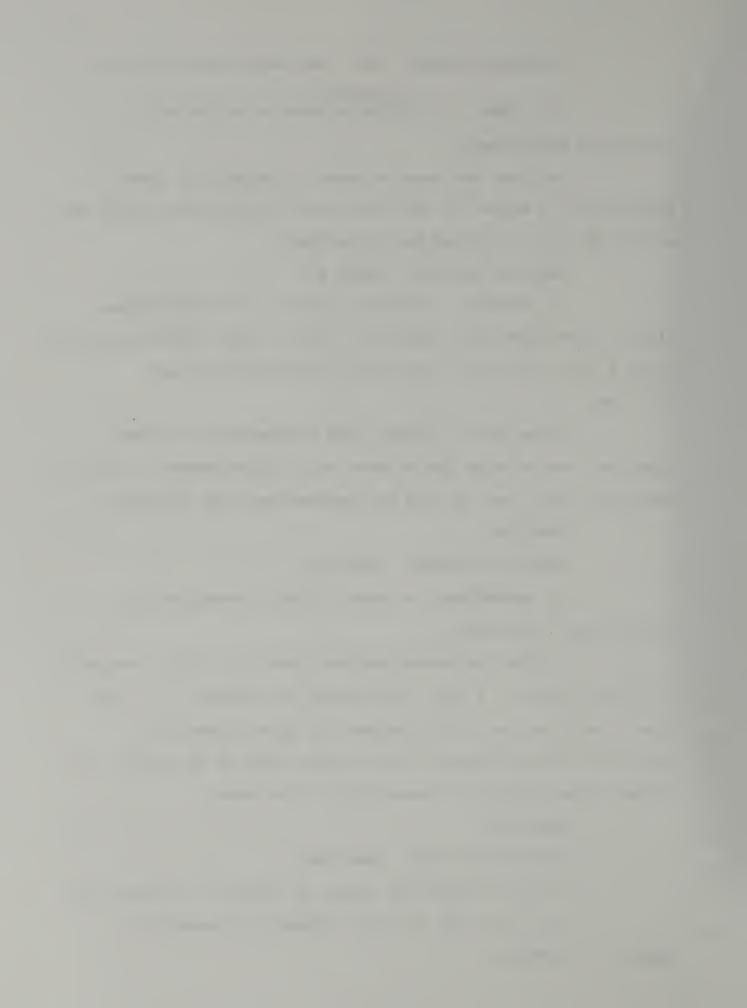
I think you heard testimony earlier today in support of Jackie Schafer. I won't go through my comments. I'd just like to say that we in full support of Lynne Edgerton's nomination and confirmation for the seat, and we think she can bring a great vision and leadership to the Board.

Thank you.

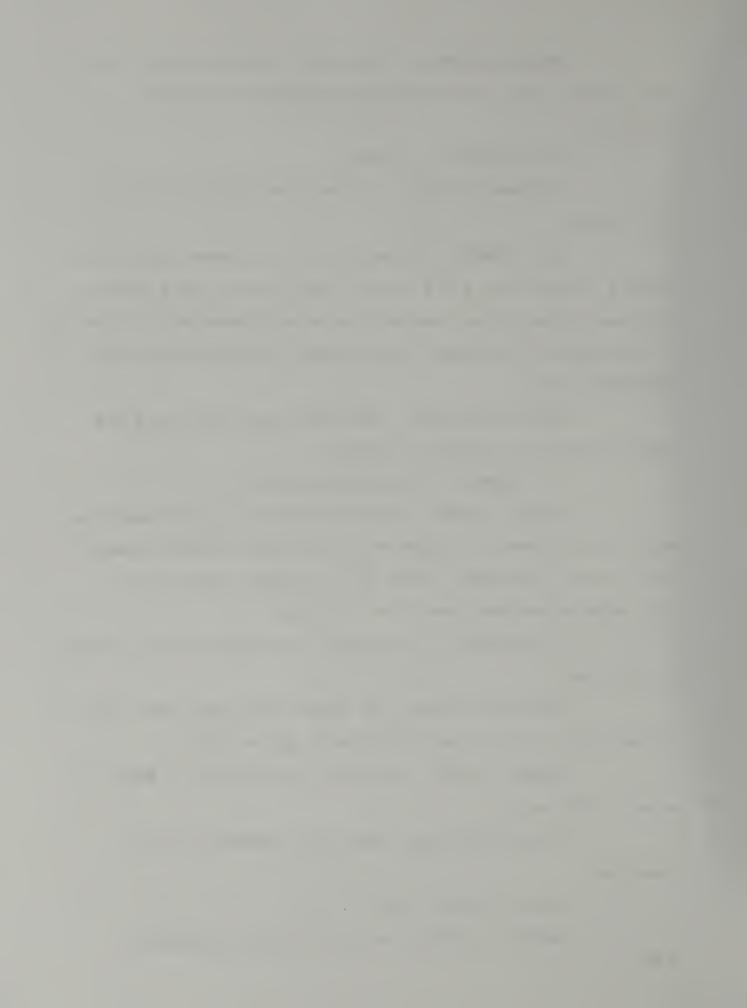
CHAIRMAN LOCKYER: Thank you.

Is there anyone who wishes to comment in opposition?

I'll note that the file reflects no opposition
letters or comments.

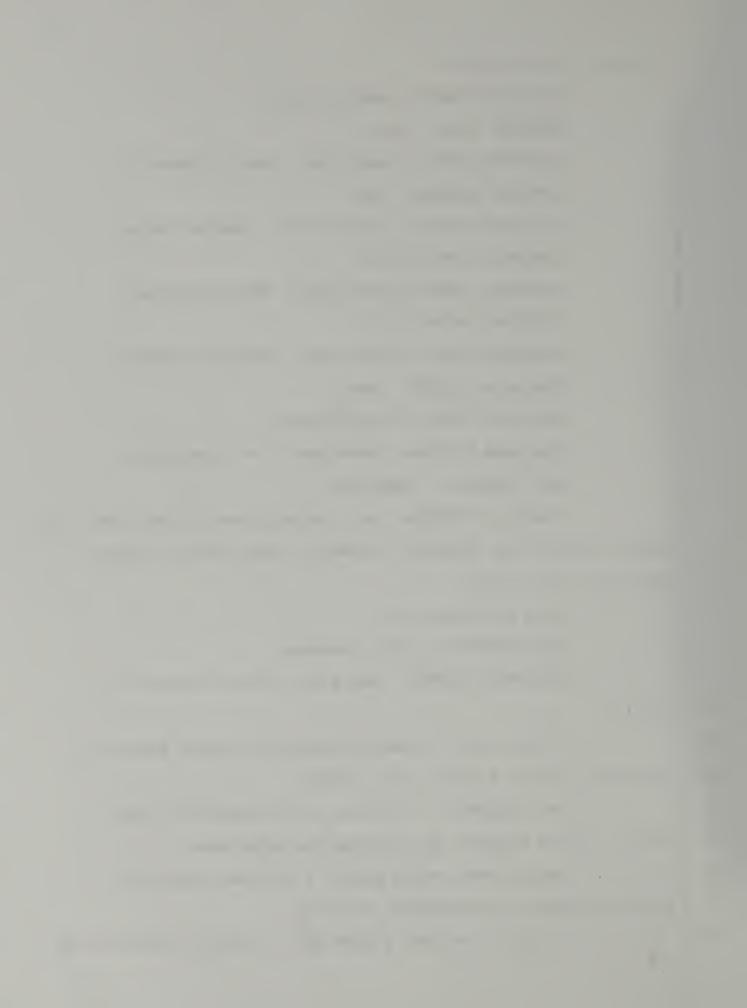


1 SENATOR BEVERLY: We haven't found out about the Iron 2 City Fishing Club. Does that have anything to do with Pittsburg? 4 MS. EDGERTON: It does. 5 CHAIRMAN LOCKYER: Do they have any fish that are 6 alive there? 7 MS. EDGERTON: Actually, it's in Canada, and it's a 8 place I've gone ever since I was a little girl, and I believe 9 it's one of the things that made me an environmentalist, fishing 10 in the pristine wilderness every summer for small mouth and 11 large mouth bass. 12 CHAIRMAN LOCKYER: Does that mean there are folks 13 from Pittsburg that wander up there? 14 MS. EDGERTON: My grandparents did. 15 SENATOR CRAVEN: Knowing where this lady comes from, 16 which is Tennessee, I thought may there was an outside chance 17 that it was in Bessamer, which is, of course, next door to 18 Birmingham where they have a lot of steel. 19 MS. EDGERTON: I'm hoping to get some fishing in here 20 in California. 21 CHAIRMAN LOCKYER: You should have spent some time in 22 Philadelphia. I could tell that was a gap in your --23 SENATOR CRAVEN: We lost all our factors. They all 24 moved to the south. 25 CHAIRMAN LOCKYER: What's the pleasure of the 26 Committee? 27 SENATOR CRAVEN: Move. 28 CHAIRMAN LOCKYER: We have a motion by Senator



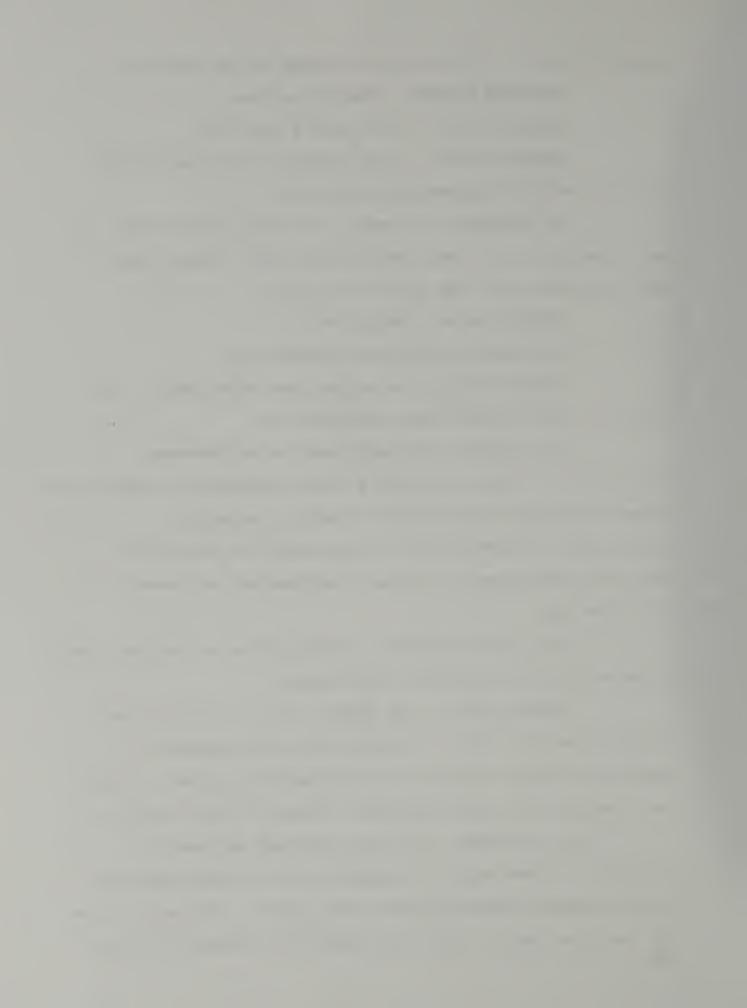
1 Craven. Call the roll. 2 SECRETARY WEBB: Senator Ayala. 3 SENATOR AYALA: Aye. 4 SECRETARY WEBB: Ayala Aye. Senator Beverly. 5 SENATOR BEVERLY: Aye. 6 SECRETARY WEBB: Beverly Aye. Senator Petris. 7 SENATOR PETRIS: Aye. 8 SECRETARY WEBB: Petris Aye. Senator Craven. 9 SENATOR CRAVEN: Aye. 10 SECRETARY WEBB: Craven Aye. Senator Lockyer. 11 CHAIRMAN LOCKYER: Aye. 12 SECRETARY WEBB: Five to zero. 13 CHAIRMAN LOCKYER: Good luck. Do a good job. 14 MS. EDGERTON: Thank you. 15 CHAIRMAN LOCKYER: Mr. Flournoy, now is the time. 16 there's anyone that wishes to comment, either for or against, 17 come up to the front. 18 Good afternoon, sir. 19 MR. FLOURNOY: Good afternoon. 20 CHAIRMAN LOCKYER: Thank you for your patience in 21 waiting. 22 Do you want to comment generally, you've served on 23 the Board now for several years, right? 24 MR. FLOURNOY: I've been on the Board for seven 25 years. I'm an engineer by training and experience. 26 During those seven years, I have been the only 27 technical member on the Board; still am.

I think I've done a good job. I didn't write out any



speech for this. I'll let you gentlemen ask me questions. 2 CHAIRMAN LOCKYER: That'll be fine. 3 Senator Ayala, do you have a question? 4 SENATOR AYALA: I was looking at your background. 5 You are a retired engineering consultant? 6 MR. FLOURNOY: Actually, I'm just retired now. My 7 last consulting job, that last dollars that I earned, was in 8 1986, 40 years after the first one of 1946. 9 SENATOR AYALA: Doing what? 10 MR. FLOURNOY: What am I doing now? 11 You earned them doing what? SENATOR AYALA: 12 trying to find out what your background is. MR. FLOURNOY: My background is engineering 13 14 construction. I started out as a design engineer with Stone and 15 Winter Engineering Corporation in Boston, designing 16 power plants. I ended up as Vice President of Occidental 17 Petroleum Corporation in charge of engineering and construction 18 for Occidental. 19 And in the meantime, I built plants and projects over 20 a good many of the countries in the world. 21 SENATOR AYALA: The reason I ask is because your 22 category that you serve is one that shall have special 23 competence in areas related to water quality problems. 24 just wondering how your background related to that kind of --25 MR. FLOURNOY: I'm not a sanitary engineer by 26 training. In other words, I would not take it upon myself to 27 design a sewage treatment plant, but in most of the projects we

had, one that comes to mind is a crude oil terminal we did in



the Orkney Islands for the -- north in the U.K. This had, obviously, oil and water separators, problems on the sanitary disposal.

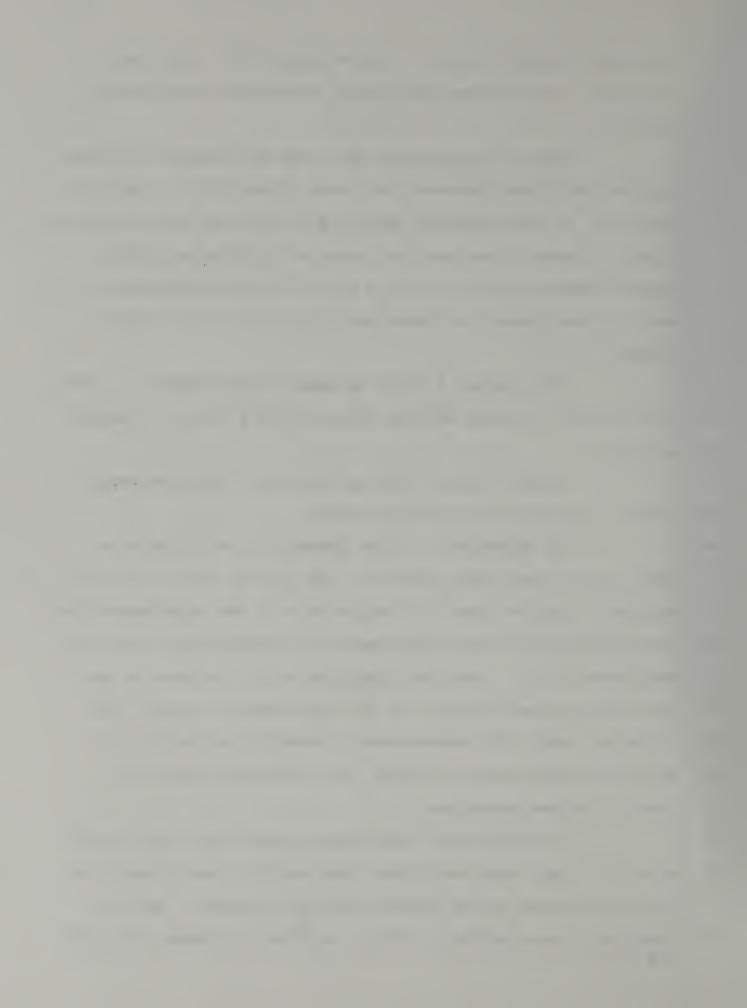
Most of the projects we've had had sanitary disposal problems with them, because there were things like -- and also chemical. We had 1650-mile ammonia pipeline that we ran through Russia. I mean, there were all sorts of problems with this, because ammonia's toxic, so as a part of my experience going for many of these years, we always had to be sensitive to these things.

And although I'm not an expert water chemist, I know how to deal with these matters because that's the way I earned my living.

SENATOR AYALA: What do you see as the major water quality issue facing California today?

MR. FLOURNOY: I think probably it's a mixture of water quality and water quantity. And this is what's going to be done in the San Francisco Bay/Delta with the requirements for the fisheries, with the requirements for agriculture, with the requirements for -- and the fishery primarily, because we got involved in water quality with the temperature of water, for instance. Well, the temperature of water is related to the amount of water that is flowing. So, the quality and the quantity become intermixed.

In agriculture, aside from the fact that the cost of water is a very important thing, the runoff of pesticides from the under drains in the farming areas is a problem. And to compound it even further, I think, we have the federal U.S. EPA,



which so far anyway, has not particularly liked the solution that the California Water Resources Board has come up with, so we have this kind of a controversy, or negotiation, or whatever it is. And these are very serious matters in a state where agriculture is our biggest industry.

So, I think that's a real serious problem, and I think it's going to become more so because I doubt that we're going to see many new water resources in this state. We're just going to have to use what we have.

SENATOR AYALA: Do you agree that we can't seriously think about water problems in California without addressing the Delta first?

MR. FLOURNOY: I think the Delta is the key to it, because the Delta means the Sacramento River, the Trinity, all of these Northern California rivers.

SENATOR AYALA: That's the key.

MR. FLOURNOY: To me it's the key, and I am not personally involved in it because my region does not include the Delta. But from the point of view of the state, I think it's key to solving water in California.

SENATOR AYALA: Thank you.

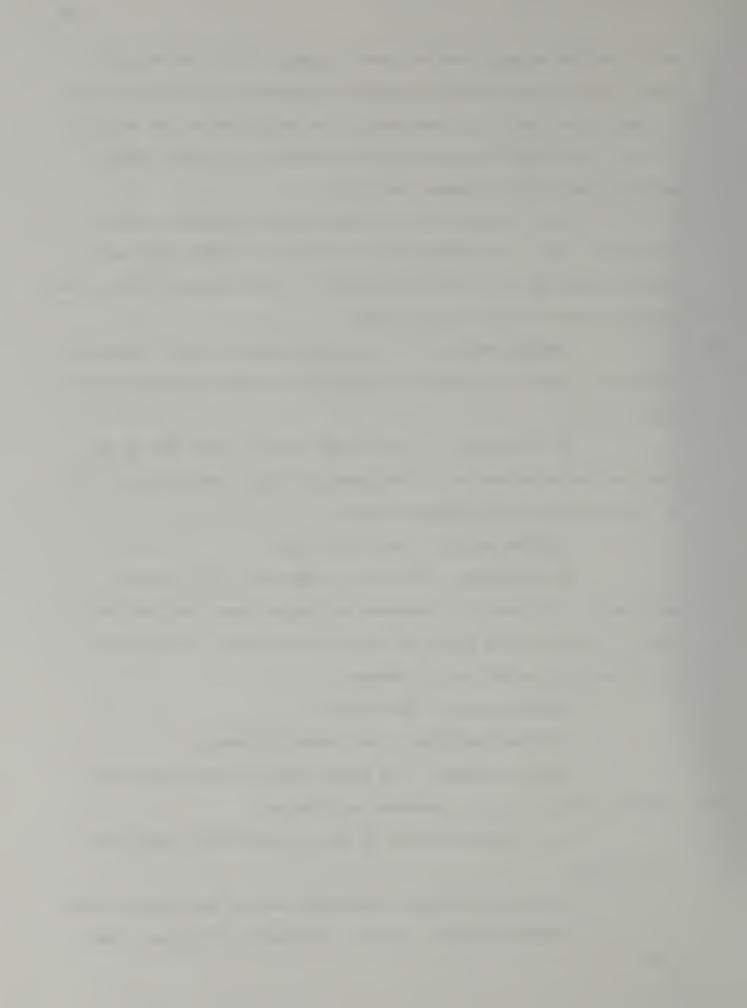
CHAIRMAN LOCKYER: Yes, Senator Craven.

SENATOR CRAVEN: I'm kind of moving away from the subject matter, but I'm somewhat interested.

This gentleman went to two of the great schools in this country.

CHAIRMAN LOCKYER: Elementary school and junior high?

SENATOR CRAVEN: No, no. He went to Andover. And



I've known of Andover for a long time, but I never knew that they gave an M.A. degree, which is on this thing here, nor have I ever heard of Johns Hopkins giving a B.E. Now, that probably stands for Bachelor in Engineering. MR. FLOURNOY: It does. SENATOR CRAVEN: And the other one, God only knows what that means. What does M.A. mean at Andover? MR. FLOURNOY: M.A. is not a degree. That's the abbreviation for Massachusetts, because there are people who wouldn't know where Andover was. SENATOR CRAVEN: I don't know who does this, Nancy, but they're pretty tricky. The last time Johns Hopkins appeared, it was John Hopkins. They change the name of the school and everything. MR. FLOURNOY: It should have an "s" on it. SENATOR PETRIS: M period A period is not the abbreviation for Massachusetts. MR. FLOURNOY: There's no degree from Andover prep school, boarding school. MS. MICHEL: You're absolutely right. SENATOR CRAVEN: It's Andover Academy, but it's Phillips Andover, because that's the family that underwrote those two schools years ago. Is it Merrimack or Andover? MR. FLOURNOY: Andover. SENATOR CRAVEN: But it's close; isn't it? MR. FLOURNOY: Merrimack is close, yes. It's just

north of Boston, 30 miles, something like that. Then you go a

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little further north to Exeter in New Hampshire.

SENATOR CRAVEN: I said two schools, that's the other one, all of which is of great interest to these fellows who went to the University of California, and Stanford, and whatever.

CHAIRMAN LOCKYER: Well, I guess I'm going to ask you to comment on Supervisor Carpenter's comment that is critical or negative. Are you aware of his --

MR. FLOURNOY: No, I'm not. I obviously know who Supervisor Carpenter is.

CHAIRMAN LOCKYER: It's his suggestion that you're an outspoken member of the group within the Sonoma County Alliance that's very critical of government regulatory activities, and specifically environmental regulations.

Do you think that's a fair assessment?

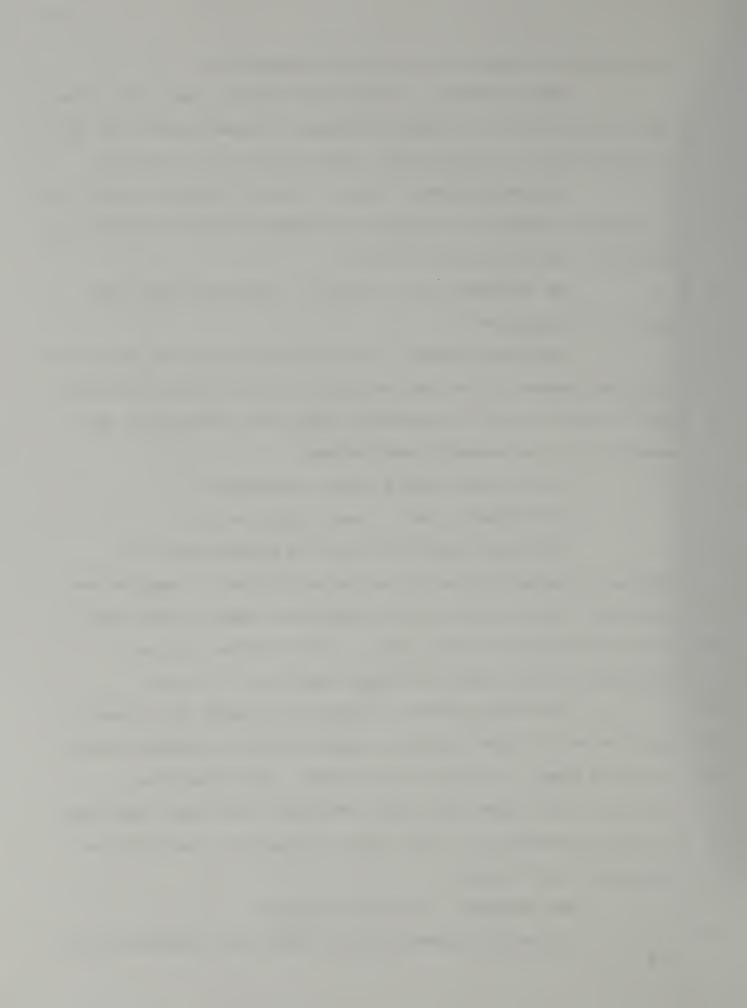
MR. FLOURNOY: No, I don't think so, no.

The Sonoma County Alliance is a group which is business oriented, but as far as being critical of regulations, California regulations, my experience with them has been that it's not critical of regulations. It's critical of over regulating in some instances where they think it occurs.

CHAIRMAN LOCKYER: Is there an example that comes to mind for you of where there was some activity or proposal that you would deem, or the Alliance and you, would deem over regulation that maybe Supervisor Carpenter would have supported? Is there anything at all that comes to mind so I could try to understand the dispute?

MR. FLOURNOY: It doesn't really.

Supervisor Carpenter has a very strong backing in the



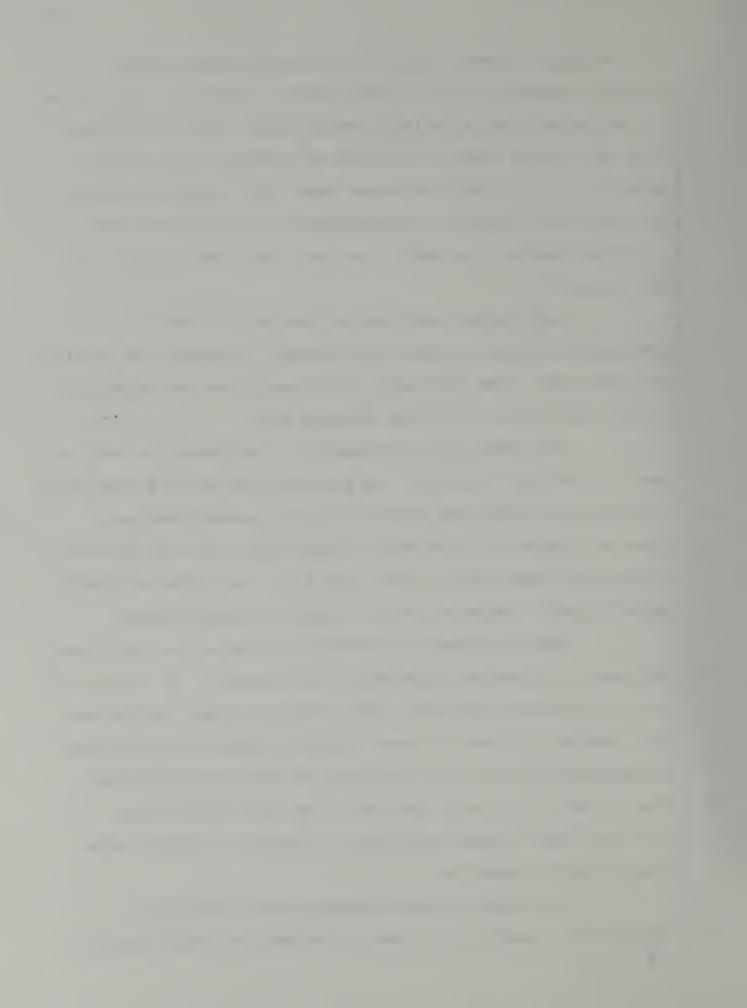
west county in Sonoma County. And there's a very strong antipathy toward the City of Santa Rosa. The City of Santa Rosa is the operator for a regional sewage plant. And the effluent from that sewage plant is not used to irrigate the land, the majority of it is, but the excess goes into the Russian River. And Supervisor Carpenter's constituency are people who live along the Russian River and -- not near the river, but in the west county.

And the meetings that we have usually have a contingent of people, from varying sides, of course, but usually the same faces, from that part of the county who are objecting to the activities of the City of Santa Rosa.

Our Board, quite obviously, is interested in what is good for the water quality. The evidence that we have been able to ascertain is that the effluent from the sewage treatment plant is cleaner than the water flowing down the river upstream of the point where the effluent enters it. And this is probably beyond dispute. This has been the result of much testing.

But this does not change the feelings, the very vocal feelings, of Supervisor Carpenter's constituents. So, there's a lot of four-letter words that get involved in this, as you can well imagine. So some of these hearings remind me of the scene I encountered coming into the Capitol Building this afternoon. Some guy had a bull horn, yelling at the top of his voice. We've had some of those situations in trying to conduct water quality control hearings.

So, I mean, there are emotions that completely obscure that I would call scientific aspects of water quality.



And they involve growth, and no growth, and all this sort of business.

You're well aware of them, you gentlemen, I'm sure, because you must encounter them more than I do.

CHAIRMAN LOCKYER: There seems to be some comments from the Russian River Alliance regarding signs in the meeting rooms, I guess?

MR. FLOURNOY: There was an incident. And again, I was Chairman of our Board at that time. I was trying to conduct a hearing. We had about 200 people in a room designed for about a hundred people, with placards and signs, and stamping of feet, and all the things that go with it, a demonstration, in other words. We had the State Police there; our executive officer had brought them in.

I told the people that we were not going to be able to conduct the hearing unless we got rid of the signs. If they wanted to demonstrate and chant and wave their signs, they were perfectly welcome to go outside the meeting room, but that we couldn't conduct the hearing under those circumstances.

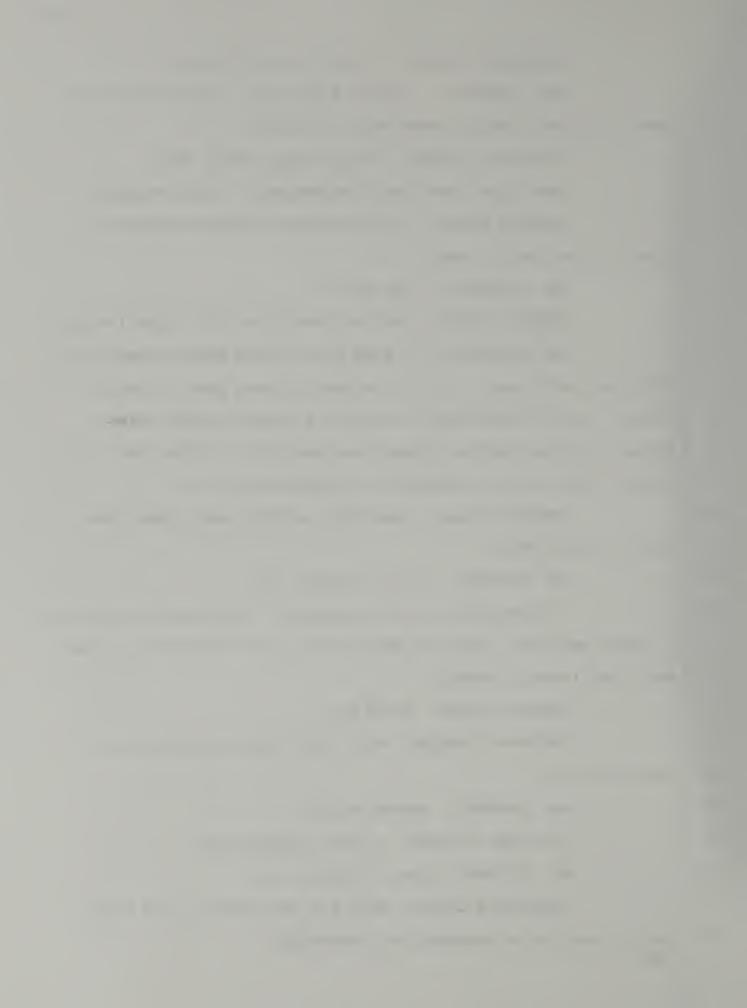
And they eventually did. We did conduct the hearing. Interestingly enough, we -- this was two years ago, we haven't had a repeat of the situation since, not with me as chairman, because I ceased to be chairman probably two or three meetings after that.

But I think in the final analysis, it was beneficial, because it's easier to conduct business in an atmosphere like the one in this room, quite obviously, rather than the atmosphere out in front of the Capitol Building.

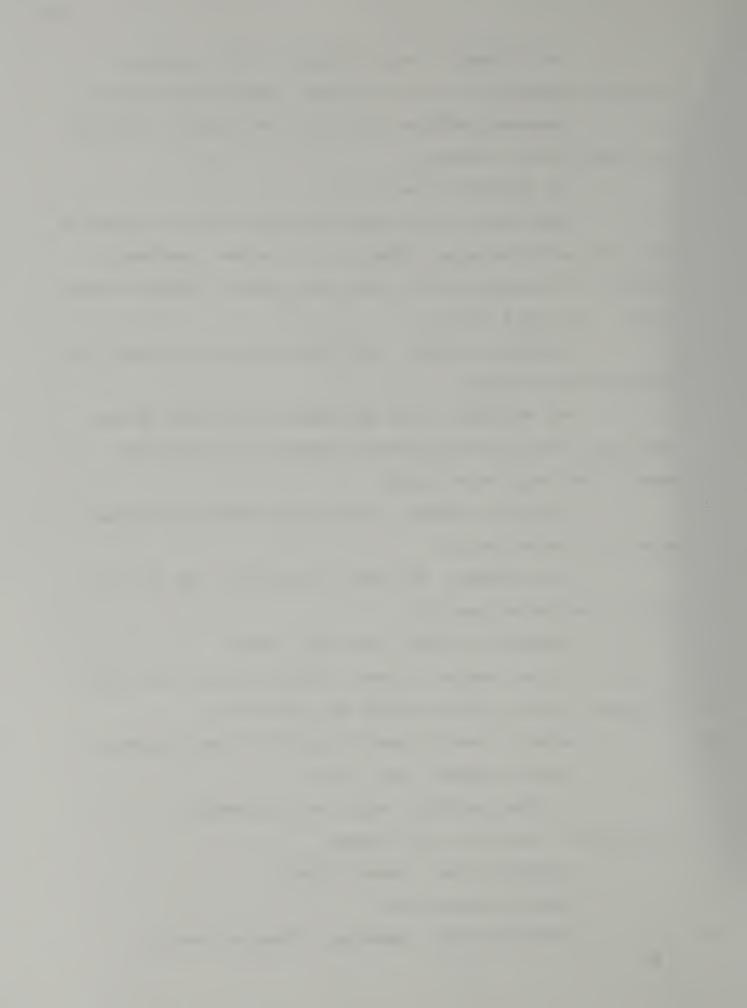


1 CHAIRMAN LOCKYER: I don't go out there. 2 MR. FLOURNOY: I don't blame you. But you wouldn't 3 want it in your hearing room here, I'm sure. You're right about that. CHAIRMAN LOCKYER: 5 Are there questions from Members? Senator Ayala. 6 SENATOR AYALA: You're seeking the appointment of 7 District One, North Coast? 8 MR. FLOURNOY: Yes, sir. 9 SENATOR AYALA: How far south does that district go? 10 MR. FLOURNOY: It goes down to the Esterro Americano, 11 which is just a hair of it is in the northern part of Marin 12 County, but it's basically the part of Sonoma County which 13 drains into the Pacific rather than draining into San Pablo Bay. 14 Then it goes on up to Humboldt and Mendocino and --15 SENATOR AYALA: Does that include Santa Rosa, the 16 City of Santa Rosa? 17 MR. FLOURNOY: Yes, it does, sir. 18 It goes east to about Kenwood. And Kenwood, although 19 it looks very flat, east of Kenwood it starts draining into San 20 Pablo Bay through Sonoma. 21 SENATOR AYALA: Thank you. 22 CHAIRMAN LOCKYER: Now, your slot on the Board is 23 water quality. 24 MR. FLOURNOY: Water quality. 25 CHAIRMAN LOCKYER: Is that appropriate? 26 MR. FLOURNOY: Yes, I think it is. 27 CHAIRMAN LOCKYER: Have you done work in the water

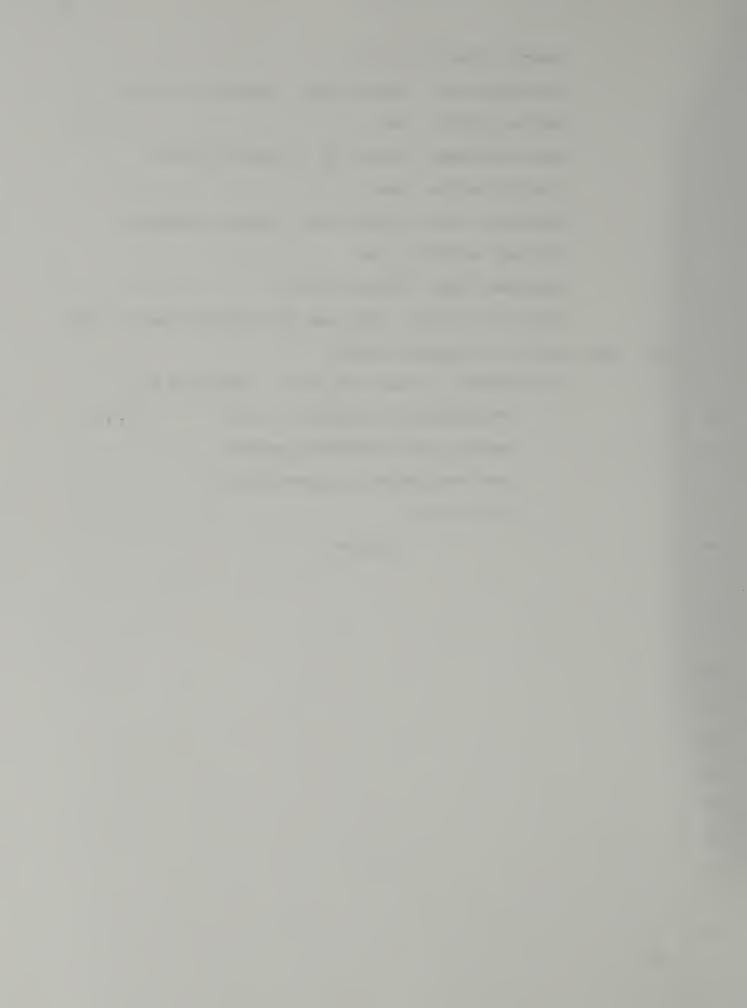
quality area as an engineer, or something?



1 MR. FLOURNOY: Yes, although I'm not a sewage 2 treatment engineer. I'm not a sanitary engineer by training. 3 CHAIRMAN LOCKYER: But still, you would be familiar 4 with water quality issues? 5 MR. FLOURNOY: Yes, sir. When you get into engineering the way I did after 40 6 7 years and end up managing companies, you've been involved in 8 highways, and process plants, and power plants, sewage treatment 9 plants. You can't help it. 10 CHAIRMAN LOCKYER: You learn a little bit about all 11 of this kind of thing. 12 What you learn to do is how to ask MR. FLOURNOY: questions, and then judge from the answers you're getting 13 14 whether they make sense or not. 15 CHAIRMAN LOCKYER: Is there any question we haven't asked you that we should? 16 17 MR. FLOURNOY: Not that I'm aware of, but go ahead. I'll try and defend myself. 18 19 CHAIRMAN LOCKYER: That's all right. 20 Let me inquire if there's anyone present who wishes 21 to comment, either for or against the nomination? 22 Senator Craven probably wishes to renew his motion. 23 Yes, I do. SENATOR CRAVEN: 24 CHAIRMAN LOCKYER: Which is to recommend 25 confirmation. Call the roll, please. 26 SECRETARY WEBB: Senator Ayala. 27 SENATOR AYALA: 28 SECRETARY WEBB: Ayala Aye. Senator Beverly.



1	SENATOR BEVERLY: Aye.
2	SECRETARY WEBB: Beverly Aye. Senator Petris.
3	SENATOR PETRIS: No.
4	SECRETARY WEBB: Petris No. Senator Craven.
5	SENATOR CRAVEN: Aye.
6	SECRETARY WEBB: Craven Aye. Senator Lockyer.
7	CHAIRMAN LOCKYER: No.
8	SECRETARY WEBB: Three to two.
9	CHAIRMAN LOCKYER: That one is adopted three to two
10	sir. Good luck and congratulations.
11	MR. FLOURNOY: Thank you, sir. Thank you all.
12	[Thereupon this portion of the
13	Senate Rules Committee hearing
4	was terminated at approximately
5	5:12 P.M.]
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#### CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the

28.

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and

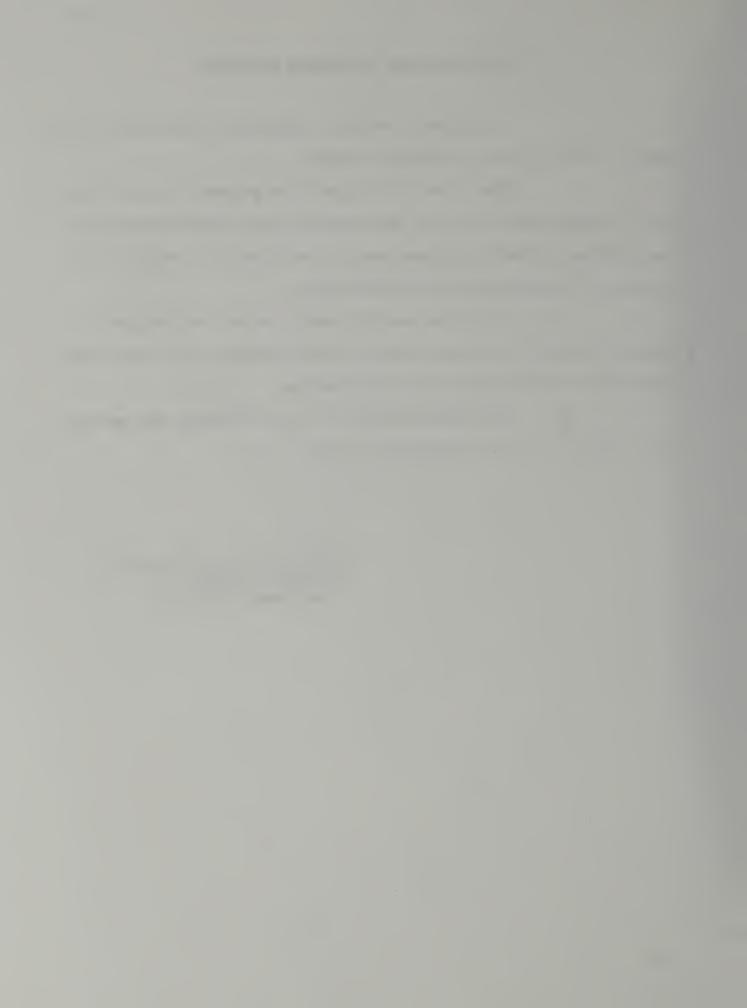
thereafter transcribed into typewriting.

State of California, do hereby certify:

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of September, 1994.

EVELYN J. MIZAK Shorthand Reporter





### 261-R

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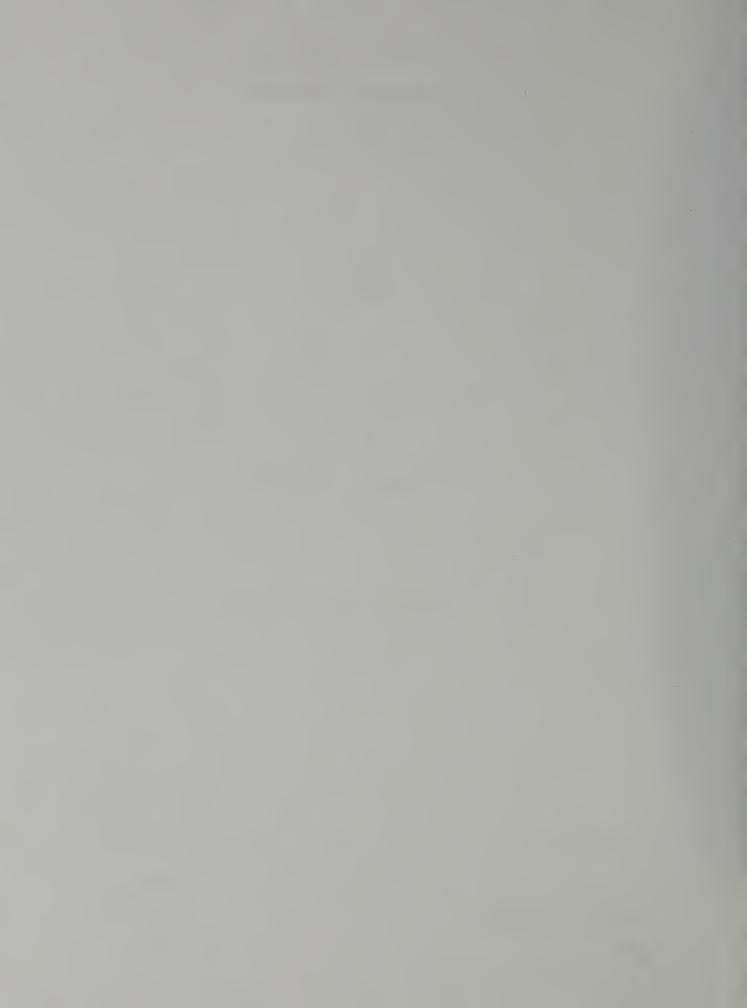
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Evelyn J. Mizak Shorthand Reporter

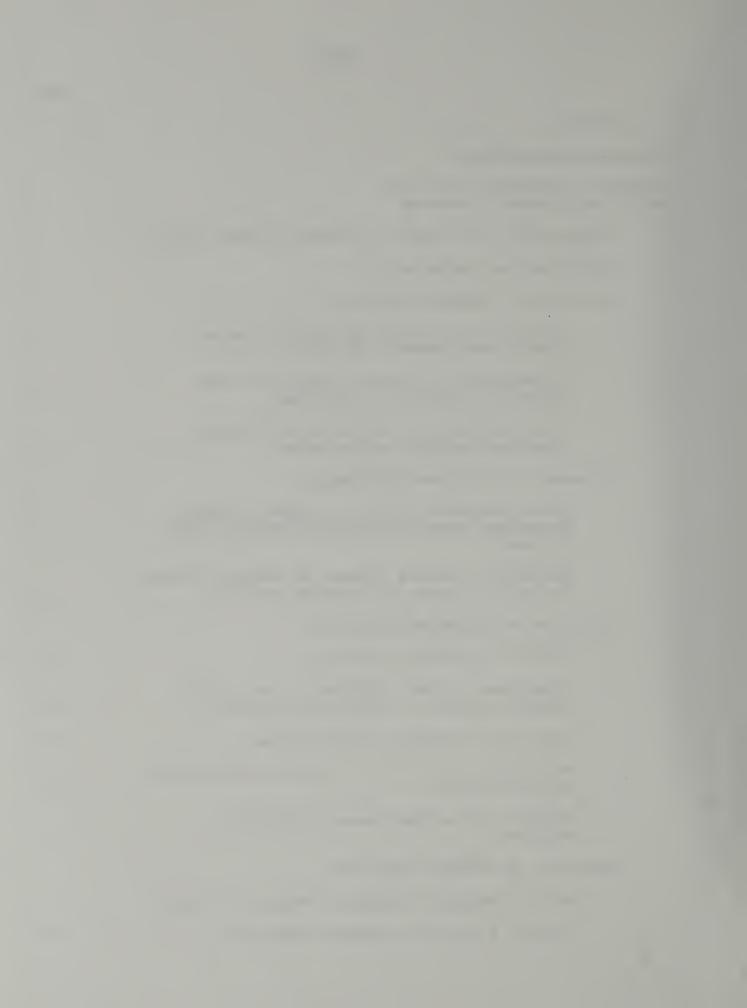


1	<u>APPEARANCES</u>
2	MEMBERS PRESENT
3	SENATOR WILLIAM LOCKYER, Chair
4	SENATOR WILLIAM CRAVEN, Vice Chair
5	SENATOR RUBEN AYALA
6	SENATOR ROBERT BEVERLY
7	SENATOR NICHOLAS PETRIS
8	
9	STAFF PRESENT
10	CLIFF BERG, Executive Officer
11	PAT WEBB, Committee Secretary
12	RICK ROLLENS, Consultant on Bill Referrals
13	NANCY MICHEL, Consultant on Governor's Appointments
14	ALSO PRESENT
15	JOANNE C. KOZBERG, Secretary State and Consumer Services Agency
16	SENATOR HENRY MELLO
17	DEAN R. DUNPHY, Secretary Business, Transportation and Housing Agency
19	SENATOR QUENTIN KOPP
20	
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INDEX

2		<u>Page</u>
3	Proceedings	1
4	Governor's Appointees:	
5	JOANNE C. KOZEBERG, Secretary State and Consumer Services	1
6	Introduction and Support by SENATOR HENRY MELLO	1
7	Background and Experience	2
9	Questions by SENATOR PETRIS re:	
10	Decision to Demolish California Museum of Science and Industry Building	6
11	Violation of Governor's Executive Order regarding Historical Buildings	8
13	State Architect's Violation of Statute regarding Bidding Requirements	9
14	Statement by CHAIRMAN LOCKYER re:	
15	State Architect's Lack of Proper Bidding Procedure caused Controversy during Budget Process	10
8	Nomination Creates Problem of Balance between Wonderful Person and Terrible Policies	11
9	Questions by CHAIRMAN LOCKYER re:	
20	Office of Insurance Advisor	11
.1	Department of Fair Employment and Housing Remedies Appear to Side with Business	13
2	Shift in Affirmative Action Goals	15
3	Position on Initiative regarding Affirmative Action Efforts	16
5	Thoughts about Department of General Services	17
6	Questions by SENATOR AYALA re:	
7	Record Keeping Problems at General Services	17
8	Auditor's Report on General Services	18



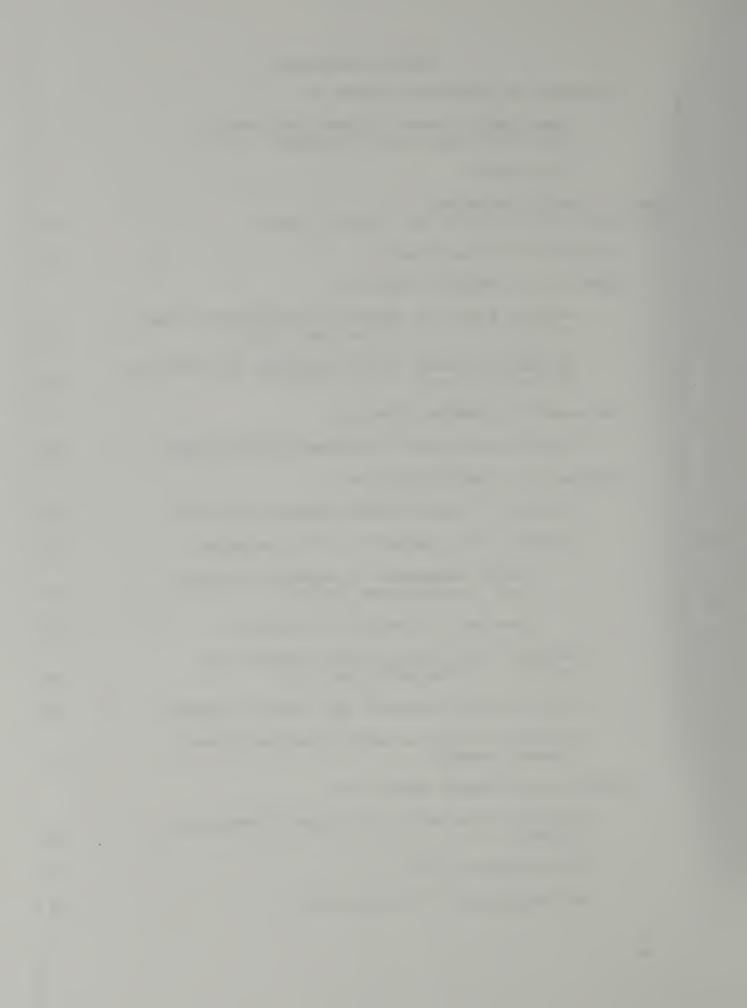
INDEX (Continued)

2	Questions by CHAIRMAN LOCKYER re:	
3	Meaning of "Realignment" with Respect to Department of General Services	18
5	Hardest Decision during Tenure with Agency	19
6	Building Standards Commission	19
7	Department of Consumer Affairs's Opposition to Lemon Law Bill	21
8	Questions by SENATOR PETRIS re:	
9	Status of Budget of State Historic Safety Board .	22
0	Contradiction in Budget Language regarding Management Review of State Architect's Office	24
2	Budget Planning with Governor	25
3	Auditor's Reports Critical of Management of Museum Board	26
4 5	Lack of Legal Foundation for Actions Taken regarding California Museum of Science and Industry	27
6	Priorities with Respect to Historic Safety Board	28
8	Need for Governor to Transfer Spouse to Position out of Agency's Jurisdiction	29
9	Questions by CHAIRMAN LOCKYER re:	
0	Office of Insurance Advisor	30
1	Statement by SENATOR PETRIS re:	
2	Renew Determination to Salvage Position on Historic Safety Board	31
4	Questions by SENATOR AYALA re:	
5	Appropriateness of Regulatory Agency Imposing Statewide Regulations which Were Twice Rejected by Legislature	32
7	What Was Emergency that Caused Adoption of Regulations	32
5		



### INDEX (Continued)

2	Statement by CHAIRMAN LOCKYER re:	
3	Committee's Intent to Keep Confirmation under Submission until December	34
5	Discussion	35
6	DEAN R. DUNPHY, Secretary Business, Transportation and Housing Agency	36
7	Background and Experience	36
8	Questions by SENATOR AYALA re:	
9	Back-up Plans for Funding Earthquake Programs in Light of Bond Failure last June	38
10	Issuance of Bonds versus Increase in Sales Tax to Fund Projects	39
12	Statements by SENATOR KOPP re:	
13	Funding Deficiency for Seismic Retrofitting	44
4		**
	Questions by SENATOR KOPP re:	
15	Advocacy of Substituting Vehicle Mile Tax	44
6	Seismic Safety Retrofit of Toll Bridges	46
7	Budget Agreement to Appropriate Money into State Highway Account	46
9	Reversal of Governor's Agreement	47
0	Improper Use of Toll Bridge Revenue Sub- Account to Seismically Retrofit	48
1	Double-Taxing Motorists Who Use Toll Bridges	49
2	Position on Bill to Sever Transportation as	
3	Separate Agency	51
4	Questions by SENATOR PETRIS re:	
.5	Status of Completion of Cypress Freeway in Oakland	52
6	Maintenance on 880	54
7	Accomplishment of Hiring Goals	55
0		



INDEX (Continued)

2	Questions by CHAIRMAN LOCKYER re:		
3	Meaning of "Realignment" with Respect to Department of General Services	•	18
5	Hardest Decision during Tenure with Agency	•	19
	Building Standards Commission		19
7	Department of Consumer Affairs's Opposition to Lemon Law Bill	•	21
8	Questions by SENATOR PETRIS re:		
9	Status of Budget of State Historic Safety Board	•	22
10	Contradiction in Budget Language regarding Management Review of State Architect's Office .	•	24
1	Budget Planning with Governor	•	25
3	Auditor's Reports Critical of Management of Museum Board	•	26
4 5	Lack of Legal Foundation for Actions Taken regarding California Museum of Science and Industry		27
6	Priorities with Respect to Historic Safety Board	•	28
8	Need for Governor to Transfer Spouse to Position out of Agency's Jurisdiction	•	29
9 !	Questions by CHAIRMAN LOCKYER re:		
.0	Office of Insurance Advisor	•	30
1	Statement by SENATOR PETRIS re:		
2	Renew Determination to Salvage Position on Historic Safety Board	•	31
4	Questions by SENATOR AYALA re:		
5	Appropriateness of Regulatory Agency Imposing Statewide Regulations which Were Twice Rejected by Legislature		32
6	What Was Emergency that Caused Adoption of		
7   8	Regulations		32



## P-R-O-C-E-E-D-I-N-G-S

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CHAIRMAN LOCKYER: We have Senator Mello present, so perhaps, if it's okay with the Committee, we'll start with my Majority Leader.

SENATOR MELLO: Thank you very much, Mr. Chairman and Members.

I'm here on behalf of a good friend and a fine person that I've come to know and respect a lot, and she's up for confirmation today for the Secretary of State and Consumer Affairs.

I was aware about two weeks ago that her confirmation was pending before the Rules Committee, and I was advised that she was not sleeping well, and not eating well, and kind of nervous about it. That's to be expected because people wait with some apprehension about coming before this very distinguished Rules Committee.

So, I felt I would write a letter, which I did, and I'd come here personally to just introduce her.

We became acquainted when she was on the California
Art Council Board of Directors, and she did a tremendous job
there. Later, she became the Director of the California Art
Council and served at that position until the Governor selected
her to be the Secretary of State and Consumer Affairs.

During that period of time, as you know, many of our colleagues, in fact, don't believe in arts or the Art Council, and there were many runs made at the budget and at the programs themselves, especially from the other house. I saw the great



**5** 

commitment that Joanne Kozberg has and her understanding of the issues, and her willingness to really fight for what she believes in, and also work closely with both the Legislature and the Governor's Office.

So, I just have a tremendous respect for her. So, I wanted to come here and say these brief words and urge the Rules Committee to confirm her because I think she's an excellent choice to head this very important agency in the state.

Thank you for letting me appear. I know Joanne will do a great job once she's confirmed.

CHAIRMAN LOCKYER: Thank you, Senator. It's always a pleasure to have you with us.

It looks like you maybe have a statement to open with.

MS. KOZBERG: I would like to.

Mr. Chairman and Members, since December of last year, I served the people of California as Secretary of State and Consumer Services. Between the Northridge earthquake and the state's continuing budget shortfalls, my agency, like the rest of state government, has been asked to be innovative, resourceful, and above all, make government work harder and smarter.

Barely six weeks after I was sworn in, the Northridge earthquake ushered in my first opportunity to make a difference. The temblor hit Southern California and knocked out schools for thousands of children, and school districts from Simi Valley to Santa Monica were forced to cope with damaged classrooms and closed schools.



The Office of Local Assistance, part of the

Department of General Services, is charged with constructing and
leasing portable classrooms for school districts. Before the

Northridge earthquake, we filled the requests for portable
classrooms in about ten weeks. After the quake, we developed a
radically streamlined process and got the first portables to the
schools in just ten days.

We made it clear that we would meet with anyone, anywhere, at any time if it meant that the children and teachers got the classrooms they needed without red tape and in record time. With the help of a lot of dedicated employees, working nights and weekends, we succeeded.

The earthquake also meant that we had to mobilize the Department of Consumer Affairs and the Contractors State License Board to get timely and accurate information out to consumers faced with the monumental task of rebuilding their homes and businesses. Over cable television and at community forums throughout Southern California, we were able to quickly get the people the information they needed on how to access government, and to get educated about their rights.

Reaching out to the consumer did not begin nor end with the Northridge quake. We have been working closely with professional boards within the Department of Consumer Affairs to continually educate them about their responsibility to protect consumers and police their industries. That is why we support Senator McCorquodale's sunset bill, SB 2036, which would create a process for jointly reviewing the effectiveness of consumer boards and reauthorizing only the ones that justify their



existence.

I have chaired hearings around California, as called for by Senator Craven, to lay the groundwork for a program to protect consumers and to establish professional standards for the auto body industry. On behalf of Californians, I've also lobbied the Congress and the U.S. Department of Agriculture concerning anti-consumer practices by the federal government which allow poultry products to be sold in California as fresh, even though they've been previously frozen.

I believe strongly in the power of government to do good. But I also believe strongly, as I have since my days as a CORO fellow and then its executive director, that government can only do good work by being inclusive, by proactively reaching out to people, to diverse constituencies, and by leveraging public and private resources to create mass and depth.

I believe in teamwork. One result of that teamwork is the report issued in April by the Division of the State Architect, addressing the need for seismic safety improvements to state buildings. In December, soon after I was appointed, we developed an interagency team to speed the completion of the seismic safety surveys by the State Architect's Office, and provide a comprehensive spending plan for repair of those buildings.

We completed the report in just four months, and with the help of Senator Torres and his staff, folded the spending recommendations into Senate Bill 747, currently awaiting action in Assembly Ways and Means.

I am currently working to implement Executive Order



W-93-94, creating the California Information Technology Council. This council, bipartisan in nature, is designed to get input from experts in the private and public sector to improve the state's use of information technology, make government information more accessible, and educate our children.

That sense of reaching out also describes the efforts of our asset management program. Working with cities and redevelopment agencies in Oakland, San Francisco, Los Angeles, and San Bernardino and Riverside, we've been able to develop plans for new office buildings which create jobs, eliminate costly and multiple leases, and make the state government more accessible, while at the same time, saving scarce tax resources. These facilities have met with great community acceptance. In Los Angeles, our plans to revitalize the historic downtown core have won major local and national awards.

The State and Consumer Services Agency has a vast menu of issues. I intend to do my best to make sure that I respond, and that the people who report to me respond in an open, inclusive, effective manner to you, the Legislature, and to the people of California.

Thank you.

CHAIRMAN LOCKYER: Thank you very much.

Is there anyone in the audience, first of all, that would wish to comment, either for or against the nomination?

Seeing none other than Senator Mello, let me ask if there are Members that have any questions? I have numerous, but we'll get to those.

Senator Petris.



SENATOR PETRIS: I'm going to ask a few questions about historic preservation policies. I've been active in that for years and am concerned about some issues that have arisen in the last couple of years.

One of them is the California Museum of Science and Industry. You've probably heard more about that than you care to at this point, and there is a dispute going on, and there are some Members who differ with each other within the Senate.

What I'm concerned about is that it's pretty clear from the record, as indicated by Senator Boatwright in his budget hearings and also by Senator Alquist as Chairman of the overall Budget Committee, in addition to what I've been doing, that the decision made some way or other to demolish a couple of buildings, both of which are considered valuable historic buildings -- one is the museum building itself, the other is the Ahmanson building; there are a couple of them -- without going through the proper process. That's what troubles me.

We have two separate agencies created by statute to review matters of that kind. One is the Historic -- I keep forgetting the titles, but I think you know -- the State Historic Preservation Board is one which has a staff, an officer, that's supposed to be monitoring things of this sort, and make recommendations, and review all requests for demolition or even alteration of a building that's been declared to be a historic one. That's the key one, and the other one I'll come up with shortly.

They were never consulted, or rather, petitioned is the more proper word, to review the proposal with respect to the



. .

Museum. And even after complaints were made from within the Legislature that that policy ought to be followed, it simply wasn't. They just went full bore ahead.

I think now we're still in the process of soliciting bids for the demolition of those buildings; is that correct?

MS. KOZBERG: Senator, I may be the one person that is not knowledgeable about the Museum of Science and Industry.

As you may be aware, and I hope I have made everyone aware, that Roger Kozberg, my husband, was appointed by the Governor in September, 1991, to the Board of the Museum of Science and Industry.

When I took this job, I went to the attorney, of course, before taking the job, to see if there was any potential conflict. There is no conflict of interest because conflict of interest is an economic interest law and he is a volunteer. However, because of perception, I have recused myself from dealing with the Museum of Science and Industry, as well as the Coliseum. I have delegated the Museum of Science and Industry to the Undersecretary, and the Coliseum issues are being handled by the Secretary of Resources.

SENATOR PETRIS: I'm aware of that, but it's still the ultimate responsibility of your office to see that the law is followed. And regardless of who is appointed to take over for you, the law just hasn't been followed, and ultimately that bounces back on you.

I suppose it's better to avoid the perception of a conflict than to insist that you stay in it and maybe have a marital conflict because your husband may want to go in one



direction and you --

MS. KOZBERG: That happens often in our family.

SENATOR PETRIS: -- and you may want to go in another direction. I don't know what his position has been in this conflict with regard to hanging on to that Museum and preserving it, or at least going through the proper committees -- not committees, but agencies of the state.

In addition to that, the Governor himself issued an Executive Order calling on every state agency to have as a high priority the notion of being aware and sensitive to the history of a particular building and safeguarding it. It appears that that order was also violated by the people who ran helter-skelter into the notion of knocking these buildings down.

Now, I don't know where they are at the present time, and I guess you're not on top of it.

MS. KOZBERG: I can make sure that the correct people come to see you.

SENATOR PETRIS: Well, I've talked to some. I had a long meeting, a couple hours, with the deputy that you mentioned. She came to the office with one or two others in a good faith effort to try to iron this out, but it hasn't been ironed out.

MS. KOZBERG: If you have concerns about my commitment to historic preservation, as a former Director of the California Arts Council, I do want you to know that I feel that architecture is part of our cultural heritage, and intend to do as I have done in the past, everything to maintain the historical preservation component in whatever we do.



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SENATOR PETRIS: Well, it may mean you'll have to unrecuse yourself to step and see that the agency does what it's supposed to do.

We have a State Historic Preservation Office, and we have a State Historic Building Safety Board, which includes seismic problems and others, neither one of which was petitioned by who ever made the decision under your roof, maybe way down below your roof. It might have been several floors, for all I know. But the problem is, you're the one ultimately running the show, and to this date they haven't done that.

They've had a lot of talks, phone calls, and some talks. But as far as I know, to this date they have not formally requested permission to proceed with this demolition.

So, if you could look into it to that extent for the purpose of coming down on the side of preservation and obeying the statute, that would be very helpful, and I would appreciate some feedback from you on that.

MS. KOZBERG: I shall certainly do so.

SENATOR PETRIS: The other thing is the State Architect made a very serious violation in completely ignoring the statute with respect to bidding requirements for minorities, and women, and veterans, and the disabled, and went direct to somebody who happened to be a close, personal friend over a period of years. He may be well qualified, but it just doesn't look good when you bypass all the normal bidding procedures and pick an old friend.

That should have been challenged, of course, by somebody in your shop early on.



Now, the last question has to do with -CHAIRMAN LOCKYER: If I may interrupt on that point.
SENATOR PETRIS: Yes.

CHAIRMAN LOCKYER: When the department or agency fails to enforce the law with respect to the State Architect's lack of judgment, or maybe worse, it causes enormous problems for us. It's very hard every year to pull together the budget votes, the two-thirds votes, and issues like that were so provocative with five Members of the Senate that it created enormous controversy: with Boatwright and Kopp being particularly exercised about the improprieties; Senator Petris concerned about the historic preservation issues; Watson and Hughes concerned about the site and their district issues. It was a mess.

And a lot of it, frankly, was the result of out-of-control administrators, or what appeared, that inflamed the whole problem. And more than maybe any other single issue, it was the one that made the budget difficult for us this year.

Pardon me, Senator.

If we could take a five-minute break, we can all get on the roll so they're able to substitute the roll without us.

Stay just where you are, or do whatever you want, but we'll be back in five minutes.

[Thereupon a brief recess was taken.]

CHAIRMAN LOCKYER: There's a number of areas I'd be interested in hearing your response to, but to be fair, I want to tell you kind of where I'm headed.

Your nomination probably raises for me the clearest



example of wonderful person, terrible policies. And I don't know how to balance that.

Now that Senator Petris is back, however, I don't want to interrupt you.

SENATOR PETRIS: I need to catch my breath first.

CHAIRMAN LOCKYER: All right, you catch yours.

Let's just go down the list. For me, they are Office of Insurance Advisor, Fair Employment and Housing, General Service, Personnel Board, you've heard this issue, and then just sort of the Balkanization of that place, and all the boards and commissions that seem to be often kind of off of their own and out of control. And I guess I would add in that category the lemon law as one specific consumer issue.

Anyhow, the Office of Insurance Advisor is, I guess, technically under you.

MS. KOZBERG: It reports directly to the Governor.

It's housed within the Agency, but it is the advisor directly to the Governor.

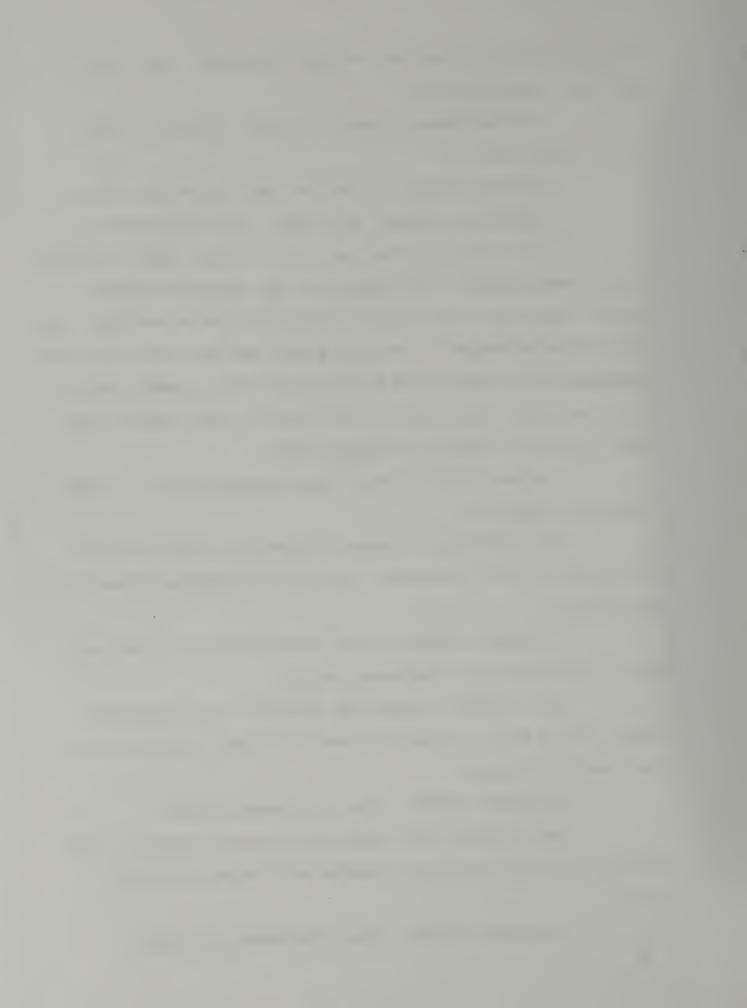
CHAIRMAN LOCKYER: What does that mean? That you don't really have any supervisory role?

MS. KOZBERG: Again, my husband is an insurance broker, and I have a letter of recusal in that I do not handle the insurance issues.

CHAIRMAN LOCKYER: But that persons does.

MS. KOZBERG: But that person does, and again, Anne Sheehan, the Undersecretary, handles all insurance-related issues.

CHAIRMAN LOCKYER: Who's the Undersecretary?



1 MS. KOZBERG: Anne Sheehan. 2 But that's one of your deputies. CHAIRMAN LOCKYER: 3 MS. KOZBERG: Yes, she is the Undersecretary --4 CHAIRMAN LOCKYER: She works for you. 5 MS. KOZBERG: Yes, that's correct. 6 CHAIRMAN LOCKYER: I guess I don't quite understand 7 what would happen. 8 If an insurance issue comes up, and there's a lot of 9 them these days in health insurance, and HMOs versus docs, and 10 different kinds of insurance, and auto, and earthquake. I mean, 11 the list goes on and on. 12 You basically don't get involved in those debates? 13 Is that what you're saying? 14 MS. KOZBERG: No, and the Insurance Advisor works 15 directly with the Governor's Office on a number of these issues. 16 As we're all aware, the industry is regulated through the 17 Department of Insurance. 18 CHAIRMAN LOCKYER: Right, but in terms of having 19 policy --20 MS. KOZBERG: I have no policy input. 21 CHAIRMAN LOCKYER: But your Undersecretary, then, 22 does or doesn't? 23 MS. KOZBERG: Basically signs off, but that Insurance 24 Advisor really responds directly to the Governor's Office. 25 CHAIRMAN LOCKYER: But you have some role with the 26 Undersecretary, I guess. No? What does the Undersecretary do? 27 MS. KOZBERG: It's really basically a sign-off and 28 pass-through to the Governor's Office to get the information



delivered.

CHAIRMAN LOCKYER: So, if they want, like, a position on a bill, or something, is that where this would come up?

MS. KOZBERG: Yes, but it is wholly -- they do their own analysis. It is not in our Agency. We do not do the analysis.

CHAIRMAN LOCKYER: One of the things we found in this budget cycle is that apparently there are a number of exempt positions scattered around through numerous agencies that are, in effect, the Governor's staff. This appears to have been something devised by Colby Olson, or whomever. I don't know where it started. It seems to be happening currently quite a bit, where governors are afraid to be criticized for an expansion of their staff. So, they way they do it is, they seed them all around, but they really work for the Governor and often are located in his suite.

That sounds sort of like the Insurance Adviser's role. I don't mean my political take on it, but that sounds like one of those kinds of things. I'll just say it; you don't have to respond.

Fair Employment and Housing, there have been disputes in recent years about appropriate remedies that are brought in an administrative forum. Many of us were disappointed that the Department seemed to fall more on the side of a business perspective rather than championing the concerns of the individual who would be bringing a discrimination complaint.

Has that debate occurred at all during your tenure?

MS. KOZBERG: We have done an entire overhaul of that



1	Department: going to an 800 number; making sure that people are
2	promptly responded to. And it's something that I'm particularly
3	interested in, as I worked for the NAACP Legal Defense Fund, and
4	I think that it really helped sensitize me and gave me a
5	familiarity with issues that would come under that department.
6	CHAIRMAN LOCKYER: When did you do that?
7	MS. KOZBERG: In 1976.
8	CHAIRMAN LOCKYER: What were you doing?
9	MS. KOZBERG: I was coordinating cases in Southern
10	California and also helping with the fundraising.
11	CHAIRMAN LOCKYER: Well, the remedy issue, though, I
12	mean, you've done, apparently, the structural reform. There may
13	be a substantive issue about what remedies are available to
14	people that probably predates you. I think this is a year or
15	two ago that we were in the midst of all of these disputes.
16	But it was very disappointing to have the Commission,
17	the Department, the Secretary all urging us to scale down the
18	remedies that were available to injured parties.
19	MS. KOZBERG: I will look into that immediately.
20	CHAIRMAN LOCKYER: That hasn't, I guess, come up
21	during your time.
22	MS. KOZBERG: No, it has not, but I will look into
23	it.
24	CHAIRMAN LOCKYER: In FEH, they're very aware of that
25	whole thing.
26	Similar question: there have been affirmative action
27	guidelines adopted by the Office of Compliance that's
28	probably not the exactly right title, but that's their job



where they have to issue regulations with respect to state contractors and state employee workforce, working with Personnel Board and others.

It's my understanding that there has fairly recently been a shift in the goals from trying to have, let's say, the state workforce achieve ethnic and gender diversity that reflects the labor force rather than the general population.

It makes a big difference, obviously, especially in Hispanic employment, because Hispanics are the most under-represented group in state service.

I think this is not a law. It's just an administrative decision that was made. I ask if it's familiar to you, or if you have any thoughts or ideas about the matter, that the guidelines were changed from the original goal of achieving employment levels that reflect the general population, and instead were changed to the labor force, which of course makes it much more Caucasian.

Does that ring a bell at all?

MS. KOZBERG: Not that specific issue, but I know right now the State Personnel Board is going through an analysis of the workforce. They've completed that, and you're absolutely correct, there is a deficiency in the Latino representation in state government.

I'm aware that they are awaiting and will be voting on a report in the fall. I will get specifically involved in that.

CHAIRMAN LOCKYER: You might ask the question as to what the target is. And I think the law permits either, it just



depends on how committed people want to be to those goals.

One of the current debates in the Legislature, and I think it will ripen, it sounds like it's going to ripen into an initiative maybe next year, is a Constitutional amendment offered up by Assemblymember Richter, Senator Kopp, Senator Campbell -- and I don't know if there were others. I know those three were involved -- which essentially prohibits state affirmative action efforts based on gender, race, ethnicity. That's what it does, basically.

I think the measure has died in the Legislature. I believe it's going on now to the initiative situation.

Do you have any views about that? Did your Agency or departments ever express opinions about the matter, or take positions on the issue?

MS. KOZBERG: I'm not aware that we have taken a position on it.

Right now the law speaks very clearly, and we are trying to do our best and exceed the goals.

CHAIRMAN LOCKYER: Well, this would stop you from doing that, and it sounds like you may not embrace that approach.

MS. KOZBERG: I think California's strength is its diversity.

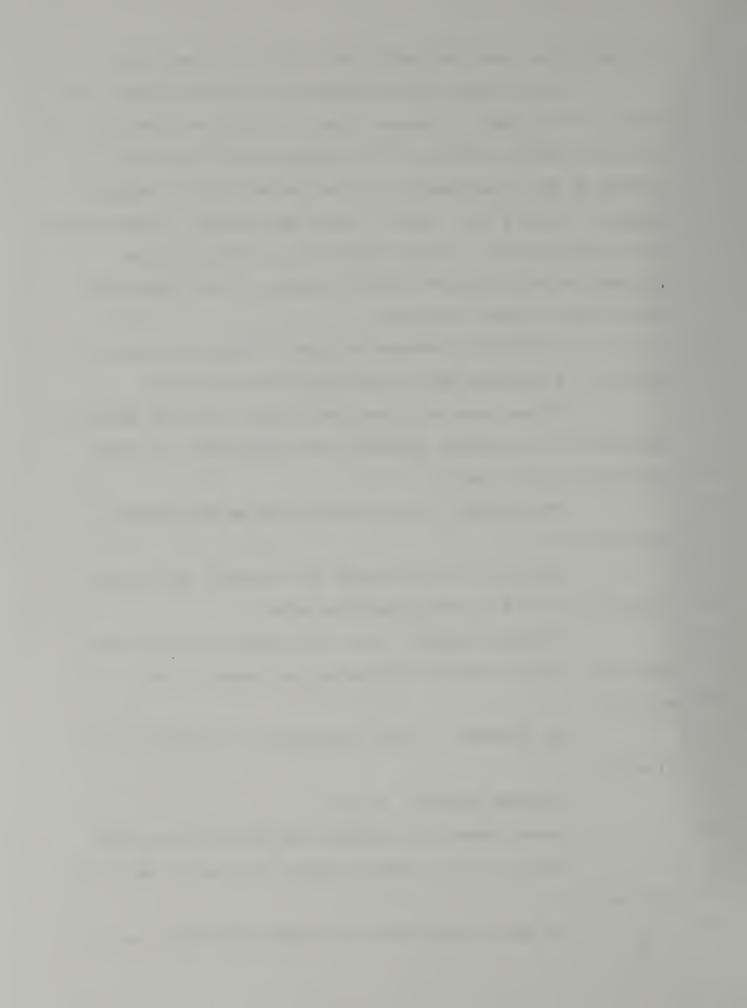
CHAIRMAN LOCKYER: Me, too.

General Services, shifting and going down my list.

Senator, if you want to resume, you can at any time.

Just pop in.

Let me mention first, we've had a discussion as to



the effort to rebuild the core area in downtown L.A. I'm delighted by your commitment and enthusiasm about that undertaking and strongly agree about the need and the energy to which your Agency and department is bringing to that task.

General Services has been the subject of numerous audit reports and criticisms over the years that suggest -- I'll over-summarize this -- that it's just this sort of big bureaucracy out of control.

I'd appreciate any reflections and thoughts you may have about the situation.

MS. KOZBERG: There is a lot to General Services. As you know, there are 25 different divisions. And a lot of the functions that -- like our Agency, are dissimilar.

I am aware and am taking a very good look at alignment. I think one of my strengths is being able to take a look and see how systems work, how people are communicating. And I can see a number of suggestions coming forward how we can improve our service.

General Services has an extremely hard task, and it is a control agency. I hope to add value to how it meets its needs, because we are all clients of that agency. And having been a director of a state agency, I'm aware of how to work with General Services from the customer's side.

SENATOR AYALA: On that point, the State Auditor has surfaced a number of problems, record keeping problems, with the Department of General Services.

What are we doing about that in General Services?

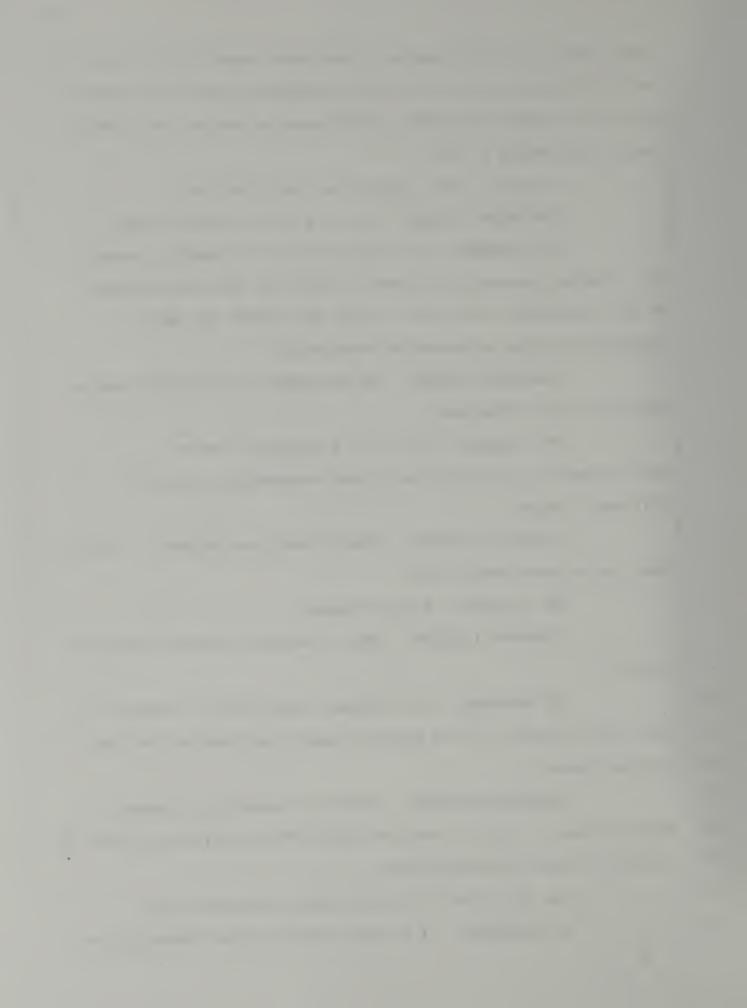
MS. KOZBERG: Well, if I could be specific to the



1	procurement issue, we have what we call Procurement 2000, and we
2	are totally taking a look, and we're going to re-engineer how we
3	procure so that we can give stronger access to small business,
4	minority and women businesses, taking a look at how we are
5	integrating our uses with the military bases that are closing,
6	looking at electronic commerce.
7	We are we know it needs improvement, and we are
8	working on that.
9	SENATOR AYALA: You are paying attention to the
0	Auditor's report. We're just not ignoring it?
1	MS. KOZBERG: No, we are working on it right now.
2	And the procurement area in particular is going full thrust in
3	taking a look at its systems, and how it is or is not
4	functioning optimally.
5	SENATOR AYALA: Thank you, Mr. Chairman.
6	CHAIRMAN LOCKYER: Are the kiosks under General
7	Services?
8	MS. KOZBERG: No, those are under Health and Welfare.
9	CHAIRMAN LOCKYER: Aren't you lucky.
0	[Laughter.]
i	CHAIRMAN LOCKYER: General Services, you have all
2	this, and when you say "realignment", what do you mean? What's
3	being thought about?
4	MS. KOZBERG: Well, again, taking a look at we'll
5	use procurement as the example.
6	There is a general frustration. There's a
7	frustration on the part of the people who try and procure and
8	the small vendors. So what we're trying to do is get maximum



1	input from the entire community and have competitively gone out
2	and bid to bring a private sector consultant firm in to take a
3	look at how state government could operate better, so that we
4	really are taking a look.
5	I hope am I answering your question?
6	CHAIRMAN LOCKYER: Yes. Are you talking about
7	MS. KOZBERG: Or real estate, for example, needs to
8	be, I think, thoroughly looked at and come into an alignment.
9	We are doing that now, but I think that there are more
10	efficiencies that we could be undertaking.
11	CHAIRMAN LOCKYER: So alignment in your mind means
12	making it more efficient?
13	MS. KOZBERG: Well, it's making it more
14	user-friendly, more efficient, more economical; a lot of
15	different issues.
16	CHAIRMAN LOCKYER: What's been the hardest you've
17	been there seven months now?
18	MS. KOZBERG: Eight months.
19	CHAIRMAN LOCKYER: What's been the hardest decision
20	so far?
21	MS. KOZBERG: The toughest issue that I think I've
22	dealt with because of the emotion that's involved is the pool
23	barrier issue.
24	CHAIRMAN LOCKYER: Building Standards, I guess,
25	adopted rules. I don't know how much actual ability you have to
26	influence their determinations.
27	Are they sort of off on their own sometimes?
28	MS. KOZBERG: If I could give you the chronology of



that issue, because that also brought up a number of other issues, too, that I think are very serious issues for the state.

When I came into office, there had already been passed emergency regulations that brought up an appendix item, which is an optional item, into becoming a mandated program of the state, and that we had to go with that particular regulation for pool barriers.

And the issue is that it's not perimeter fencing.

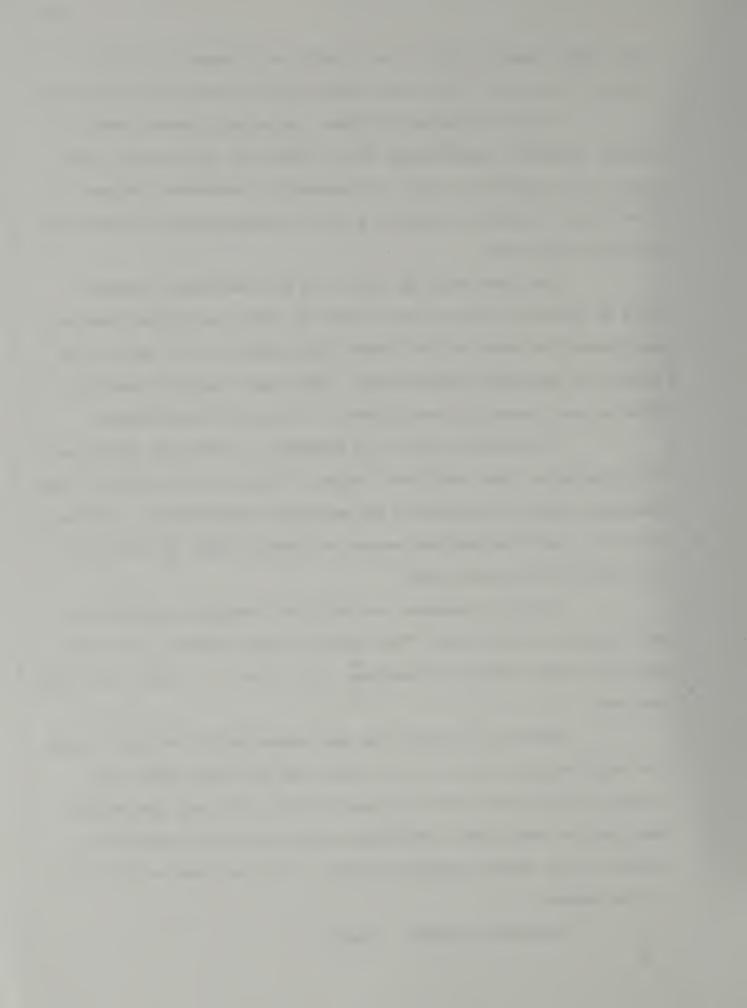
This is fencing that you would have to have four-sided fencing, and where the house is the fourth side, there would have to be alarms on the doors and windows. That was brought forward by Housing and Community Development. It passed in September.

I came into office in December. After the different constituencies came and spoke to me, I first of all believe that emergency regulations should be emergency regulations, and that we should have the maximum amount of public input up-front on all decisions that are made.

In this instance, we held two hearings in Northern and Southern California. They were all-day hearings, and they were extremely emotional hearings. So, that is a piece that was the past.

There was a bill that was concurrently moving through the Legislature, and on the day that the Building Standards

Commission took its vote, the barrier bill that was facing the Legislature, which did have distinctions from our regulation, passed out of Senate Appropriations. It later died on the Floor of the Senate.



MS. KOZBERG: What we have done since is brought all interested parties together to sit around the table.

CHAIRMAN LOCKYER: Did you have a position on the bill?

MS. KOZBERG: On the bill, we had an oppose position on the bill.

CHAIRMAN LOCKYER: How about lemon law, while I think of positions on bills? There's been, of course, a proposal to strengthen it in a variety of ways.

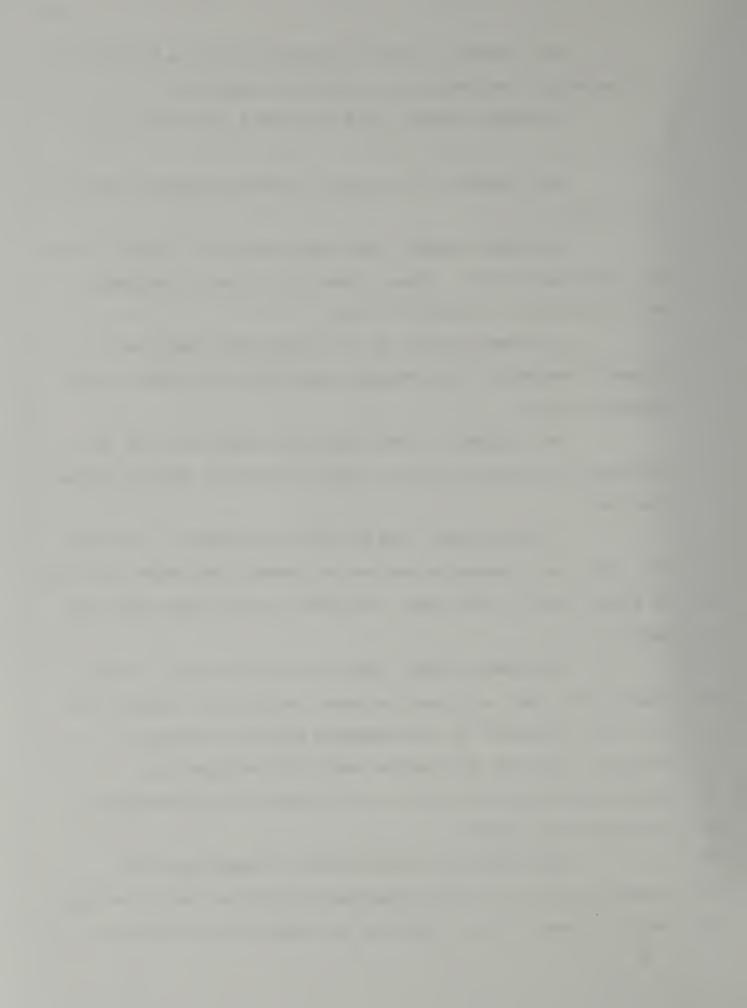
It seems peculiar to me to have the agency most uniquely responsible for representing consumer concerns to be opposed to that.

MS. KOZBERG: I have seen the comment done by the Department of Consumer Affairs, and yes, they do have an oppose position.

I remain open. The session is not over. I do know that there is a consensus that we can improve the lemon law, and we remain open to doing that. We know it is an issue with the public.

CHAIRMAN LOCKYER: Well, sort of the heart of the dispute, but there are numerous ones, involves how aggravating it is for a consumer to get something fixed or changed or replaced. And when the dispute resolution programs in California are basically ones run by the automobile companies, it starts being unfair.

Most states now have shifted to department-run programs, but now we have a department under you that's saying, "We don't want to do it. We want the industry to continue to



 run these programs," where things happen like people aren't even notified that their arbitration is occurring. They aren't even told, the consumer. They go there, and there's a conflict of testimony. The consumer finds out about it, and they say, "Well, I'd like a little more time to get my records that will refute the other argument." They say, "No, too bad."

I mean, it's just horrible, the things that go on.

And to have the Department of Consumer Affairs being an aggressive advocate against consumer is distressing.

MS. KOZBERG: I have put in a call to Harry Snider, who is the West Coast head of Consumers Union.

As I said, I remain and the Agency remains very open. We will sit down with anyone anytime. We realize that there is room for improvement.

CHAIRMAN LOCKYER: So, you're open, but the

Department under you has a position. How does that occur? Do

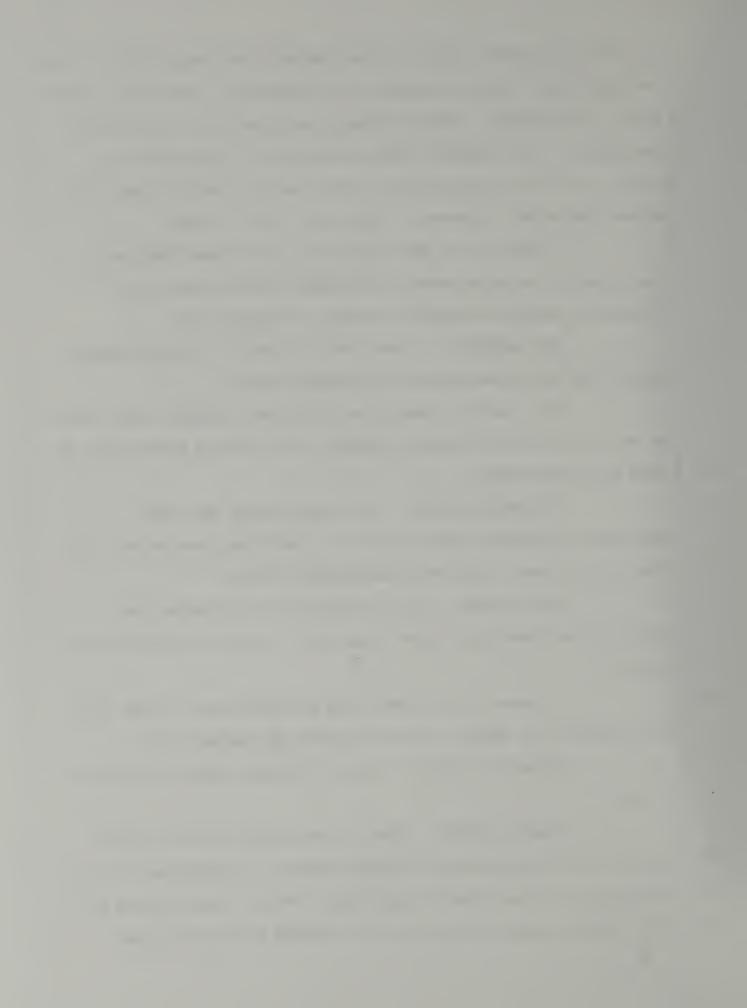
they all do that, this whole Balkanized place?

MS. KOZBERG: In this particular instance, the Director just came back from a vacation. I saw his position on Monday.

I intend to sit down with the Director, and he will be, hopefully, a member who sits around the table, too.

CHAIRMAN LOCKYER: Senator Petris, maybe I can shift to you.

SENATOR PETRIS: What's the current status of the budget of the State Historic Safety Board? I understand during conference, it was totally eliminated. Then I heard there was some effort to put it back, but I'm not up to date on that.



MS. KOZBERG: It was eliminated in conference; \$831,000 were taken out of the State Architect's budget. There is very little General Fund money in the State Architect's budget.

The only two programs that we had were the Toxics

Program, which is a federally mandated program, and the State

Historic Building Safety Board person.

SENATOR PETRIS: Is he under the Architect?

MS. KOZBERG: He is under the State Architect.

SENATOR PETRIS: He's not under General Services?

MS. KOZBERG: Again, General Services is very large.

The State Architect is officed within General Services.

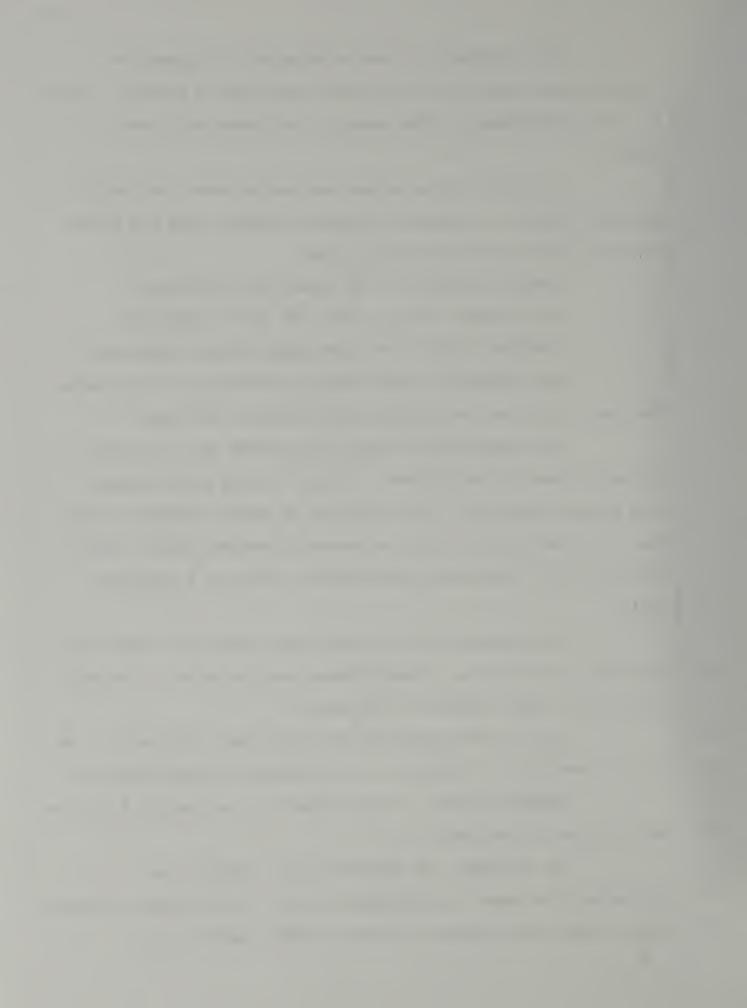
We immediately sat down and worked with the State
Historic Preservation officer. We are working with Finance,
with General Services. We think that we have a remedy for this
year. We are going out with a number of federal grants that we
think we have a very good opportunity to have on a matching
basis.

We consider that function very important, especially as we are reviewing our seismic codes, and the historic seismic code has not been updated in ten years.

So, we have preserved that function, that person, who will be working on a number of very important issues this year.

SENATOR PETRIS: Do you expect to get enough from the feds to make up the loss?

MS. KOZBERG: We think we will. There's an indication that FEMA has mitigation money. In addition, through the National Parks Service, there is money, again, to do



specific work that's seismically related, and we have the grants going in now.

SENATOR PETRIS: Well, there seems to be a contradiction in the budget. They eliminated the money you indicated, thereby eliminating the functions, and yet they're requiring the Bureau of State Audits to conduct a management review of the Office of the State Architect to evaluate the degree to which the State Architect provides -- not provided -- but provides oversight, coordination and leadership in meeting the state's property management goals, particularly to obtain the following: one, compliance with the State Contracts Code relating to bidding, that we've been talking about; two, requirements for minority, women, and disabled veterans, and that's specific to the issues that were discussed before, veteran-owned business enterprises; and three, coordination of local government development plans.

I don't understand how this can be done -- to observe and give a critique on how they're doing these things -- when they're not doing anything. Can you help me with that?

MS. KOZBERG: Are we talking in reference to the Historic Safety Board in this particular instance?

SENATOR PETRIS: Yes.

MS. KOZBERG: Well, what we have done --

SENATOR PETRIS: We're talking about the State

Architect specifically, not the Board in this instance. They've

both been wiped out. This provision relates to the Architect.

This may have been drafted before the cuts were made, but it is in the budget as of now for next year.



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MS. KOZBERG: Well, the position that was taken in the budget cut was the position for the Historic Safety Board representative. And that is where the cut came.

What we have done is, we have maintained that position. As a matter of fact, we're trying to even integrate it more closely into the workings of the Department.

SENATOR PETRIS: And how about the State Architect?

That's the federal grant you're seeking?

MS. KOZBERG: Well, the federal grant we're seeking is to help do some of the work, the focus of the work, the mitigation work and the code work that would be done.

I do know that the Historic Board position we've got to treat long-term and take a good look at how, you know, we're going to maintain this, because I understand that this is not the first year it has come up in the budget.

SENATOR PETRIS: Do you confer with the Governor on planning the budget for the following year?

MS. KOZBERG: Yes, we give input.

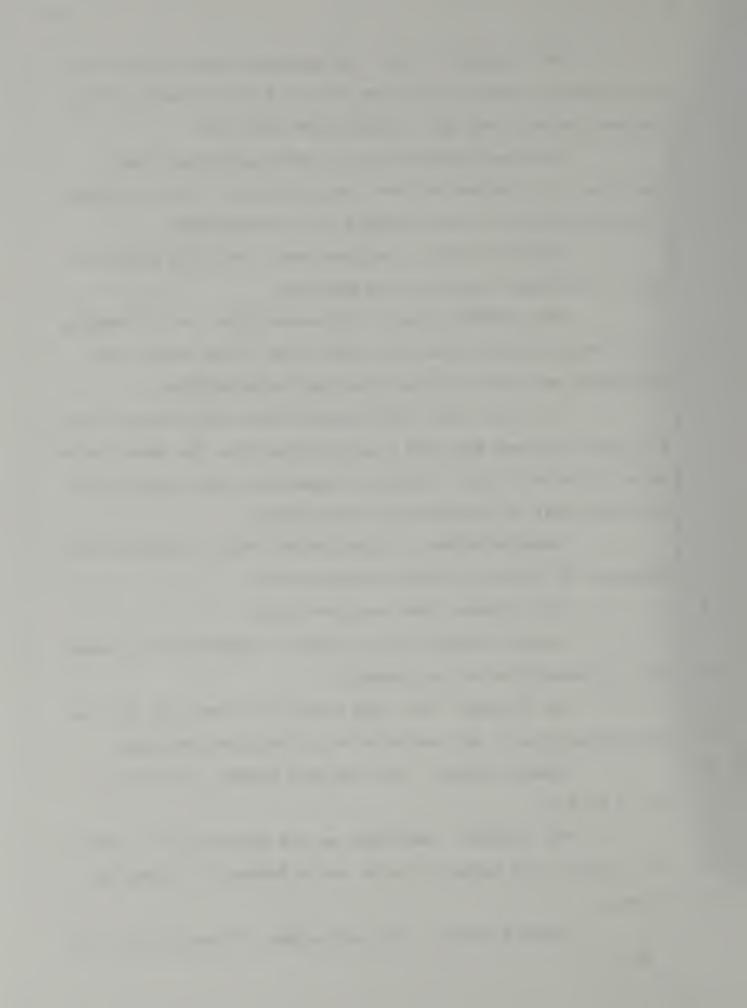
SENATOR PETRIS: You'll have an opportunity to make your recommendation on the budget?

MS. KOZBERG: Yes, and I will sit down with all the affected parties to try and work out a long-term solution.

SENATOR PETRIS: For the next budget, we'll try to put it back in.

MS. KOZBERG: Actually, we are looking for -- and it will parallel the budget cycle as we go forward -- a cure by December.

SENATOR PETRIS: You understand, if they're put out



of business, then there's just no agency or effort at all to carry out their very important function. I guess that's why you're trying to restore it.

MS. KOZBERG: Absolutely, and historic -- the preservation officer that resides within Resources, Cheralyn Woddell, also feels that it's extremely important to save. She is sharing a federal grant that she has so that the committee can travel to do their work.

SENATOR PETRIS: I think I read that somewhere, about the travel.

Are you familiar with the reports of the Auditor, the two separate reports? They're very critical of the management of the Museum Board over the past year or two.

MS. KOZBERG: I am not.

SENATOR PETRIS: I think some effort should be made to supply you with copies, even though you don't want to deal with that directly. Somebody in your shop should be.

MS. KOZBERG: I will make sure that I have copies.

SENATOR PETRIS: If you have any problem, let me know and I'll get them for you.

We also have, going back now to the legality, which I'm concerned about, we have an Attorney General's opinion that say they must comply with the law and petition these two separate agencies. Legislative Counsel also has a similar opinion.

You may not be aware of those, either. Perhaps I should have those sent to you.

MS. KOZBERG: I would appreciate that, though I'm



sure the Undersecretary has all the documentation.

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SENATOR PETRIS: As I said, I met with her for a couple of hours. We didn't come to any agreement; it kind of fizzled out. But at least we tried. I was concentrating on these same issues.

Now, was she appointed after the decision was made on the Museum or before?

MS. KOZBERG: The decision --

SENATOR PETRIS: To go ahead with the demolition.

MS. KOZBERG: I believe that -- I'm not quite sure.

I know that the bill was signed in July of 1991. I don't know whether the plans were fully fleshed out at that point in time or not.

SENATOR PETRIS: Which bill is that? The Hughes

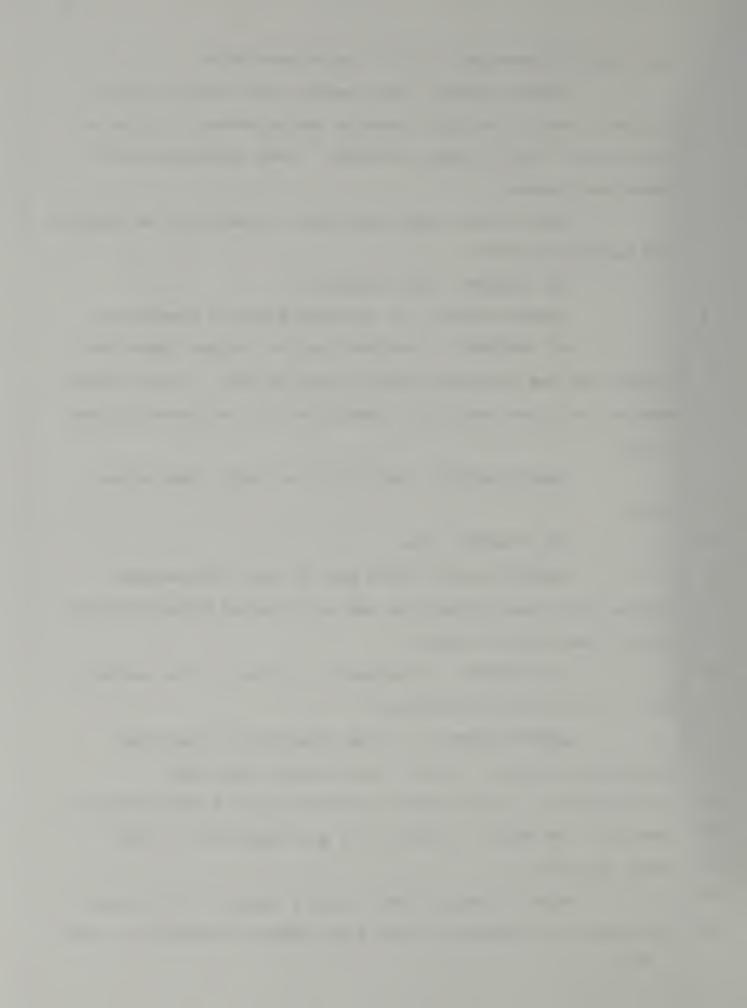
MS. KOZBERG: Yes.

SENATOR PETRIS: Then part of that mix included turning over state property to the L.A. Unified School District. Are you familiar with that?

MS. KOZBERG: In concept, I'm aware of the concept, but I do not know the specifics.

SENATOR PETRIS: I'd be interested in the legal foundation for that. I don't think there's any legal authorization. I don't think we passed any bill authorizing the transfer. You know, it may go to a good cause for a local school district.

Part of the plan was to put a school in the Armory -the Armory's the other building I was trying to think of -- and



have the L.A. Unified School District go in there.

I don't know of any legislative authorization for that. I hope I'm mistaken. I hope maybe you'll be able to find it.

Well, let me ask you, what are your goals now that you've run into this hornet's nest, too late to do an about-face, I suppose. What are your plans? What are your priorities with respect to carrying out your duties on this portion?

I know Consumer Affairs covers a very big range.

Senator Lockyer touched on parts of it.

But with respect to these issues, what will you do?

MS. KOZBERG: With respect to the Historic Safety

SENATOR PETRIS: Yes.

MS. KOZBERG: I would, again, be happy, and even if you would convene, or we could jointly convene, to bring the group together so that we could help understand what their priorities are, what they want to accomplish, and see how we can match that up with the appropriate level of funding they need to carry out their goals.

SENATOR PETRIS: I would welcome an opportunity to do that.

On this Audit, the report is supposed to be made to the Joint Legislative Budget Committee and the fiscal committees by March 31 of next year, so there is a little time for all of us that are interested to work on that.

Now, on this recusal, I think it's honorable for you

Board?



1	to step down, but the Governor may have a problem of a married
2	couple that is much too talented and whose services are highly
3	desired, but I would hope he would arrange a transfer. Your
4	very talented husband ought to be put in a different shop, and
5	that'll relieve you totally. You don't have to be so cautious
6	and hesitant. You ought to be free. You ought to have your
7	hands free to do the job, and I think this inhibits you.
8	Passing it on to the assistant really isn't the same thing.
9	Perhaps I should speak to the Governor on that
10	MS. KOZBERG: I think that would be a wonderful idea.
11	SENATOR PETRIS: I'm sure he has so much confidence
12	in him, with good cause, that a suitable assignment can be found
13	that'll relieve you of this burden.
14	MS. KOZBERG: Thank you. I cannot hire or fire my
15	husband.
16	SENATOR PETRIS: Yes, I understand.
17	CHAIRMAN LOCKYER: Well, it's a new age.
18	[Laughter.]
19 .	MS. KOZBERG: But you might pass that on. That would
20	be very nice.
21 :	SENATOR PETRIS: Thanks, Mr. Chairman.

Thanks, Mr. Chairman. SENATOR PETRIS:

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CHAIRMAN LOCKYER: This might be a frustration that I have with the Insurance Advisor and the Governor, so it's perhaps entirely unfair to raise it in connection with your confirmation, but it does in my mind summarize three years of a relationship, or nonrelationship, with the executive officer.

I worked for two years on insurance reform, auto, to try to find ways to save more than no-fault supposedly saves,



but avoiding arguments about personal responsibility and so on; doing fundamental change to the tort system.

Two years' work, three actuaries, which is torture in itself, for hundreds of hours, hearings and hearings, and on and on.

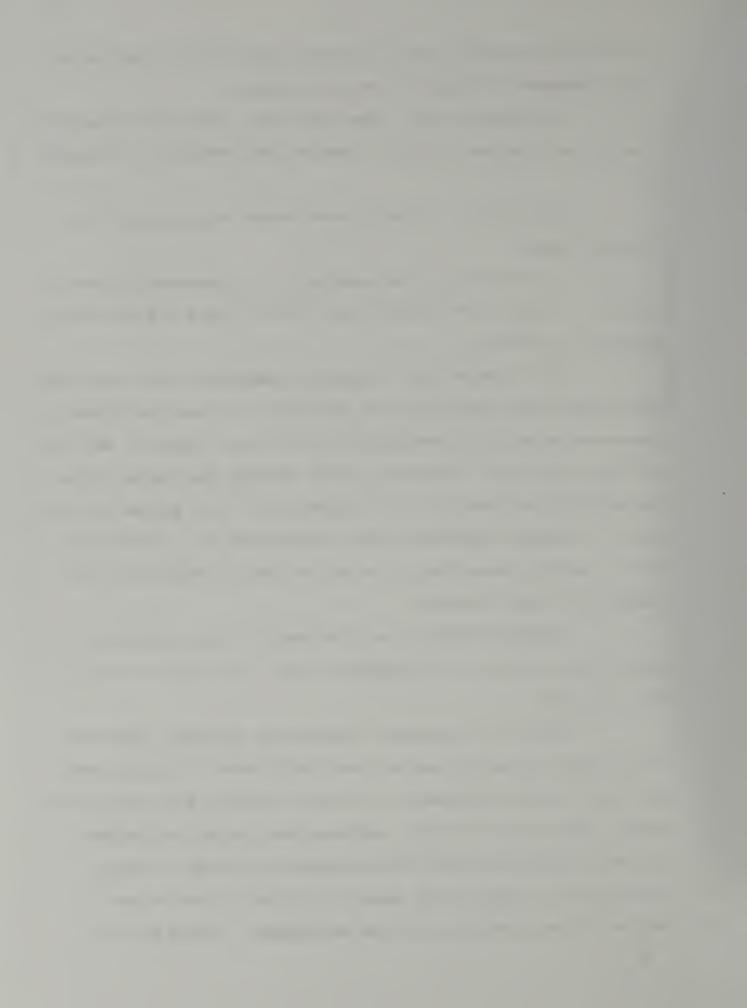
We did it. Probably saved about twice as much as no-fault saves.

I couldn't get two minutes of the Governor's time to pitch it. I got a veto message that said, "Thank you very much. No-fault or nothing."

So, I guess that's really a complaint I have with the E.O. rather than those who work for him, but since the office of Insurance Advisor is technically in your shop, though it may not be under your wing, I mention it just because this seems to be the appropriate place for us to unload all of our gripes of this sort. It doesn't necessitate any response at all, other than just to express some frustration at the lack of mutuality and inability to work together.

SENATOR PETRIS: May I go back to this just for a minute, just to kind of re-emphasize that I'm trying to help you, actually.

This is a statement from General Services, Chairman of the board reviewing some of the history here. The statement says that in the Department of General Services, from which this comes, there's 69 structural engineers who review and inspect the work of the engineers and contractors involved in school construction. There are at least 22 project directors who monitor the work of paid outside consultants. There are 11



professionals dedicated specifically to review access compliance for state preservation mandates and federal and state law. Yet, there's only one professional -- one -- assigned to educate, exhort, review, and ensure compliance with the state's historical building code. And that position's been eliminated, the one we've been talking about.

I just want to get that in better perspective to urge you to renew your determination to salvage it. I know you're trying.

MS. KOZBERG: Senator, I feel very strongly about salvaging that, and I think you all saw the movie "Dave". Well, I rolled up my sleeves and went through every dollar in that budget to try and leverage the money.

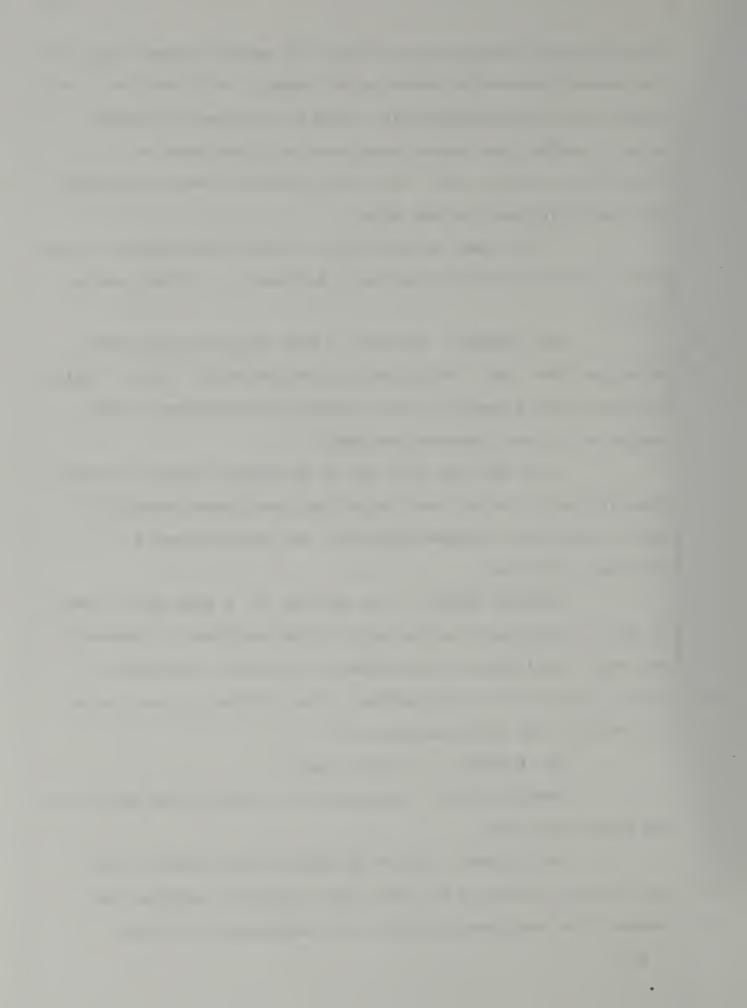
I am familiar with how to do grants, and so I'm more than willing to write those grants and participate myself in getting that board funded properly. But it does need a long-term solution.

SENATOR PETRIS: Once you get it, I hope you'll keep an eye on the relapse on the part of the Architect in bypassing the other requirements with respect to veterans, disabled, racial and so forth requirements in the bidding process, so we can restore that and strengthen it.

MS. KOZBERG: I do know that --

SENATOR PETRIS: Especially in view of your work with the NAACP down south.

MS. KOZBERG: And we do monitor every month, and I know that Mr. Lockwood has been very concerned, watching the numbers. We are ahead of goals. We can always do better.



SENATOR PETRIS: Well, the Architect was behind goal. Thank you.

SENATOR AYALA: One question.

CHAIRMAN LOCKYER: Senator.

SENATOR AYALA: I'd like to revisit the pool fencing issue, with the Building Standards Commission adopting emergency regulations for the construction of barriers around swimming pools, and so forth.

Do you believe it's appropriate for a regulatory agency to impose statewide regulations that have been rejected twice by the Legislature?

MS. KOZBERG: Well, again, when the Commission voted, it voted the same day it passed out of Senate Appropriations, so that the legislative will at that moment was moving -- that it was moving through.

The bill was different than the regulation; however, it was amended as it was heard again, and now there are very large similarities between he bill and the regulations.

SENATOR AYALA: What was the emergency that caused this to be adopted?

MS. KOZBERG: I wasn't there at the time, but I will tell you that since I serve as Chair of the Building Standards Commission, we have gone into an education program, as you need with all commissions. You have a number of people that come, and they represent one phase or factor in an industry, or a consumer group, but they may not be aware of the open meeting laws. They also may not be totally familiar with the regulatory process.



You will find a well-educated Commission now, who understands the regulatory process and the responsibility in it.

It is -- the pool barrier regulations have gone out for public comment. They're due to vote again September 22nd.

I am sure that what has happened in the Legislature will become part of what will form a final decision. And again, HCD that is the sponsor of these regulations. The Board hears the issue.

SENATOR AYALA: I'm not sure if you're answering the question.

Do you think it's appropriate for regulatory agencies to impose these conditions when the Legislature rejected them twice?

MS. KOZBERG: What happened --

SENATOR AYALA: I know they're not the same.

MS. KOZBERG: No, I hear what you're saying.

At the time we did this, and all parties indicated they would be willing to sit down and talk together, the bill was moving through the Legislature, at the time we took the vote. It was subsequent to the Commission's vote that the Senate voted down the bill.

SENATOR AYALA: I'm not sure you answered my question.

Do you think it's appropriate for them to do that, take action on some regulatory issue that the Legislature has --

MS. KOZBERG: No, the Legislature is the final authority.

SENATOR AYALA: But if they defeated it twice, yet



the agency adopts emergency regulations, do you think it's 2 appropriate for them --3 MS. KOZBERG: No, I do not think so. 4 SENATOR AYALA: That was the answer I was looking 5 for. 6 MS. KOZBERG: Okay, sorry. 7 CHAIRMAN LOCKYER: I have nothing further to ask 8 about. 9 Let me inquire if Members do? 10 We'll renew a willingness to have anyone in the 11 audience testify if they wish. 12 I would recommend, since action doesn't have to be 13 taken until January --14 MS. KOZBERG: No, it's December 7th. 15 CHAIRMAN LOCKYER: I thought you were appointed in 16 early January. 17 MS. KOZBERG: No, I was appointed December 7th. 18 CHAIRMAN LOCKYER: Well, that's fine. We don't have 19 to do anything until then. 20 I think we can probably keep it under submission for 21 the time. There's, perhaps, an opportunity for the Committee to 22 vote in the next week. The greater likelihood is to wait until 23 December, because we'll be back on, I think, the 5th, and we 24 won't have new hearings, or anything of that sort. 25 Just for myself, what I am trying to sort out is the 26 conflict I feel between knowing that this is an exemplary 27 appointment, that you're well-suited and energetic, doing what 28

seems to be a good job, and a range of concerns about various



subunits in your Agency that seem to be examples of bureaucracies that need to be reined in. I'd like some more specific evidence of that happening before moving forward, and then some of these philosophical disputes that trouble me, and I'm not quite sure what the appropriate thing to do in those circumstances is. That is, do we just say, well, the Governor gets whomever they want, even if you disagree philosophically, or do we have some role in that domain. I'm not sure.

So, I'd like some time to mull and think and consult with my colleagues, but we'll try to be prompt and fair.

MS. KOZBERG: Thank you, Senator.

CHAIRMAN LOCKYER: Thank you for a nice discussion.

SENATOR BEVERLY: Mr. Chairman, just a comment.

I would hope we could act before December, if for no other reason, who's going to be on the Rules Committee come

December 7th or December 5th.

CHAIRMAN LOCKYER: Well, there'll be an election.

SENATOR BEVERLY: I understand, but this is a member of the Governor's personal staff, not another appointment.

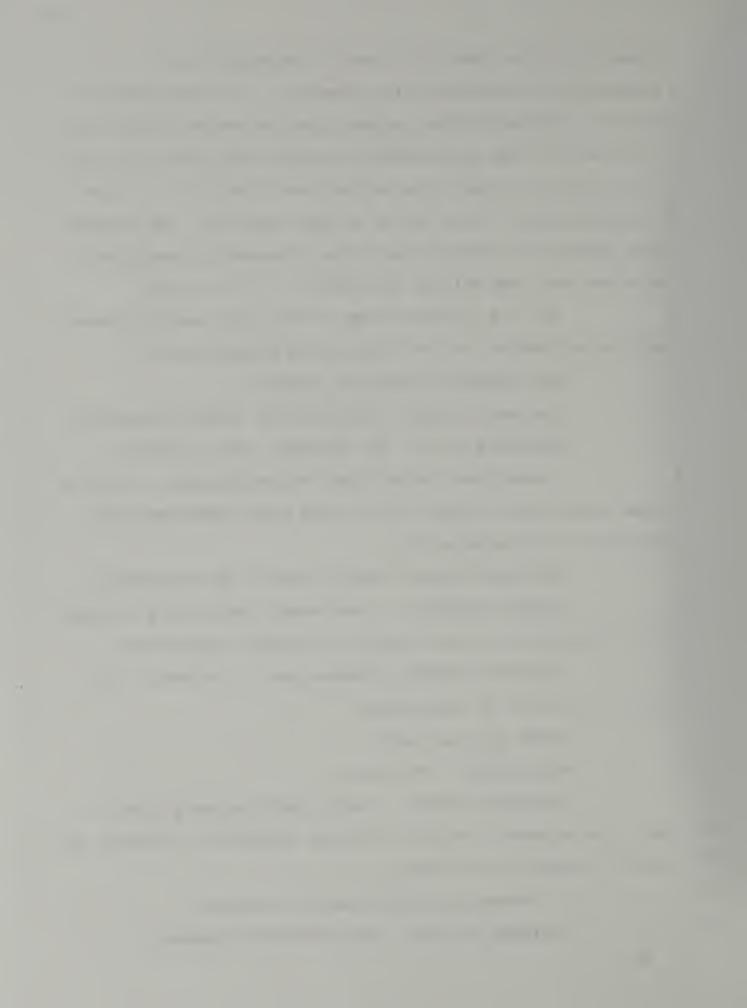
CHAIRMAN LOCKYER: I understand. I'm aware, and that's 40 percent of the problem.

Thank you very much.

MS. KOZBERG: Thank you.

CHAIRMAN LOCKYER: I think you'd probably like to have a few minutes. Why don't we take another five minutes, and then Mr. Dunphy will be next.

[Thereupon a brief recess was taken.]
CHAIRMAN LOCKYER: One thing we've learned,



Mr. Secretary, is that you're a patient man. You've had to sit through the stuff yesterday and again this morning. I'm sorry.

It's mostly a problem caused by being the end of the session.

MR. DUNPHY: I understand, Senator. I hope my reward comes at the end.

## [Laughter.]

CHAIRMAN LOCKYER: There's one there somewhere.

We have a quorum present, and thank you, sir, for your presence.

Did you have something, it looks like you do, that you wanted to --

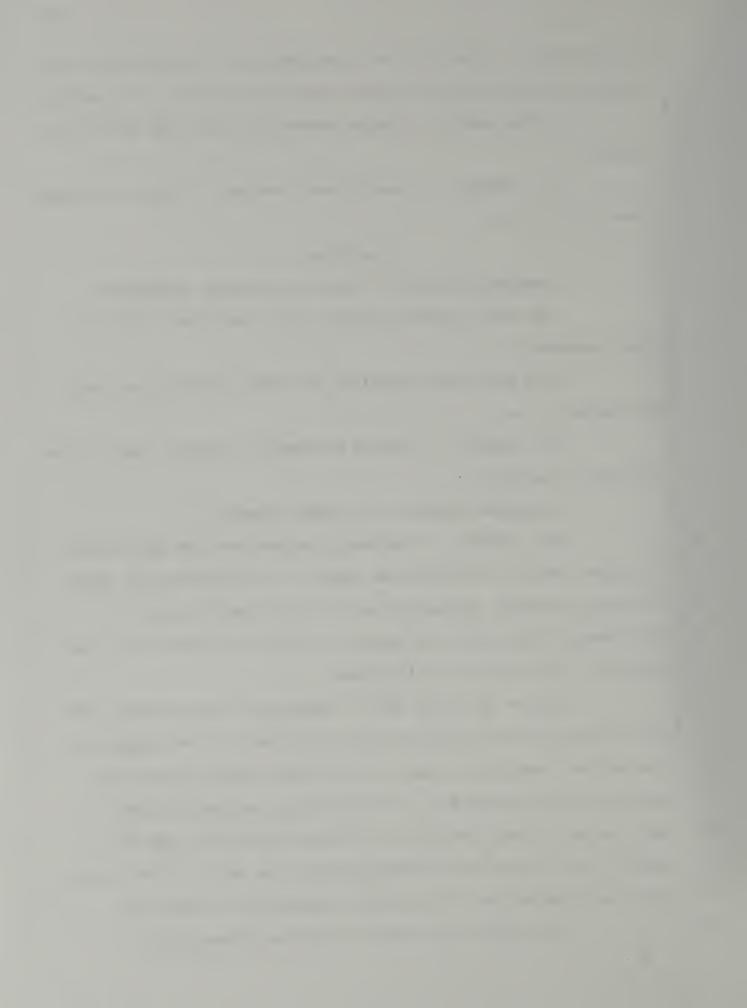
MR. DUNPHY: I have a statement, Senator, but in the interest of brevity --

CHAIRMAN LOCKYER: Go ahead, please.

MR. DUNPHY: I certainly appreciate the opportunity to appear before the Committee today. It's obviously an honor to serve the State of California in this capacity and a privilege to work with the Members of the Legislature for the benefit of the State of California.

Let me also say that I understand only too well the seriousness of the tasks that face the Agency as we prepare for the future. And as you know, just 14 days after having been appointed, on January 4th, the Northridge earthquake sent shock waves through the state, Southern California and the nation, and I might add, internationally as well. It's a jolt that has affected us all, and will continue for some time.

But even in the face of such an unprecedented



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disaster, we were able to transform, in less than six months, from the rubble of our crippled transportation networks, the majority of freeways to pre-quake capacity, keeping traffic and commerce flowing, which is the life blood of our economy.

We helped to provide immediate shelter to those in need, and as we continue to rebuild our damaged neighborhoods, we also recognize the sizable challenge of providing for future safety, housing and transportation needs.

I remain optimistic that we can meet these challenges to provide for California's future. I plan to call upon and encourage the same can-do attitude and spirit of innovation that allowed us to rebuild the Santa Monica Freeway in just 65 days.

As Governor Wilson said, and it was widely reported, "They can shake us, but they can't break us."

California has the talent pool and the will to succeed. I believe that within the Wilson administration and the Legislature, there is a will to come up with the solutions, to face the issues facing government today, and I look forward to working with you to achieve those goals.

Thank you, sir.

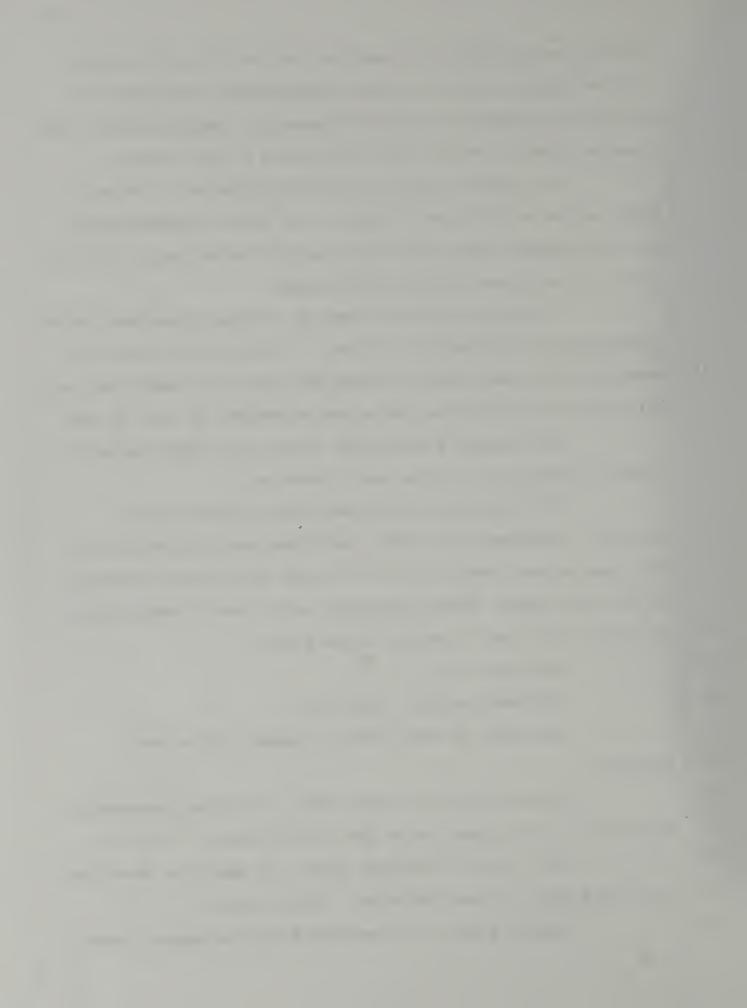
CHAIRMAN LOCKYER: Thank you.

Any cards in your pocket, reminders from your daughter?

He has this little cute habit of keeping comments in his pocket: the slogan for he day, or the month. It's nice.

Well, let me just ask, first, if there are questions from any Members of the Committee? Senator Ayala.

SENATOR AYALA: You mentioned the earthquake issues



and problems that we experienced earlier this year.

As you know, we tried to get the funding through a general bond that failed in June. Does the state have any plans to carry out, or did you have any back-up plan if that issue failed? Where are we today? Are we in a vacuum that we don't know where we're going in terms of funding for these programs?

MR. DUNPHY: Let me answer first by saying that the Legislature and the Governor have always believed that the maintenance of the freeway system is the number one priority. You have to protect that which you have.

The back-up plan was always that the first revenues to be achieved through the gas tax were to be applied to the preservation of the system, and that includes the retrofitting and the restoration of the freeways, should they need restoration. So, that back-up plan was always there.

What it effectively did, however, without the addition of revenue from any source, was to impact the progress of other construction projects that are contained within the State Highway Implementation Plan.

And so, the planning was there, and the effort to secure additional revenues through the Proposition 1-A to provide about a billion and 50 million dollars for the retrofitting of bridges throughout the state. And I add that because I think there was a misperception on some of the voters' part that that was only to apply to the Los Angeles area, where, in fact, it was to provide funding for what we refer to as phase two of bridges, about 1355 bridges, throughout the state.

I might add, for Senator Lockyer and Senator Petris,



that there are more in the Bay Area than there are in the Los Angeles area.

So that the revenues that we expected were denied us by a vote of the public, and so we had the plan in place to go forward by utilizing existing revenues from existing sources.

What we have done, and if you'll permit me to expand on that, I might answer in advance questions with respect to the action taken by the California Transportation Commission to secure approval for the implementation of the Katz-Killea bill, a bill that was passed in 1991, right after the Loma Prieta earthquake, which recognized the problem that might exist between the competition for funds for seismic retrofit and for the construction of STIP projects. And that bill specifically provided that the California Transportation Commission, as an issuing agency, should they reach certain findings of needs, could issue short-term revenue anticipation notes, secured only by the future gas tax revenues, not General Fund revenues, but gas tax revenues. And that those notes would have -- could extend no farther than the year 2000, and would provide the repayment source for those notes, and therefore making them marketable.

That plan is in place at this point and will provide for uninterrupted seismic retrofitting, while permitting some vary important projects to go forward.

SENATOR AYALA: What is the rationale behind bonds issued to take care of the highways and freeways in our state versus a sales tax?

Now, the Bay Area problem, has that been completely

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restored now --

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MR. DUNPHY: No.

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SENATOR AYALA: -- due to the earthquake?

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MR. DUNPHY: I expected a question on that.

No, sir. For a variety of reasons, answering your

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last question first, the restoration of the Cypress Freeway and the completion of the I-280 are underway, but they have been

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stalled by a variety of local decisions which reflected views on where the freeway, particularly the Cypress, should be restored,

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and it necessarily, in the face of a rebuild in place issue,

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caused the local community to ask questions about where it

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should be built. And so, a new route was adopted. And through

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that process, environmental impact reports, et cetera, meeting

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community needs, that greatly stalled the Cypress.

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restoration and retrofitting of that freeway, but were stopped

With the 280, the Department actually began

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by the seismic safety review committee, seismic safety peer

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group, actually, who said that the method adopted did not meet

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their more conservative view. So, we stopped for a year while

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research was conducted at the University of California at San

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Diego, in their major structures laboratory, and determined a

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way in which we could retrofit that two-level viaduct. Very

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complicated structure.

And following the completion of that work, the restoration work began with about five new contracts to complete

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it.

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SENATOR AYALA: None of the delays were the result of lack of funding. The sales tax was sufficient to take care of

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the problems.

MR. DUNPHY: Yes, and in the Bay Area, you'll recall that the federal government obliged itself to pay for the restoration of those freeways. So, that was -- there was not a funding issue at no time. They're almost all local issues concerned with where you build it, how you build it, et cetera.

SENATOR AYALA: I guess what I'm trying to point out is the fact that we have the sales tax for, what, two and a half years, whatever it was, and then --

MR. DUNPHY: We had a quarter cent sales tax for a period of time, and I don't recall what that period was.

SENATOR AYALA: And we had sufficient funding, with the help of the feds, to take care of the issues.

I just wonder why we're going into the bonding problem here, where we extended, and it takes 40 years to amortize it? The cost of the bond will be twice that amount of what we really are borrowing from future generations. People that will come 30 years from now don't even know where the earthquake area is, but they'll be paying for it, as opposed to a sales tax that would terminate in two or three years, and it's gone.

So, heaven forbid that we have another type of problem earthquake-wise, seismic, and we'll have two bonds now trying to come up with the funding for that. And again, folks that come in 30, 40 years from now will help amortize the bonds and they don't even know where Northridge is today.

I don't understand the Governor's philosophy on this issue.



MR. DUNPHY: Senator, I think that there is always room for discussion as to the efficacy of sales taxes and bonds.

But you've permitted me to pull one of my cards from my pocket, and to remind you of the differences that pertain to Loma Prieta, 1989, and Northridge, 1994.

At Loma Prieta, in '91, the sales tax was 6 percent; today it's 7.25 percent. The gas tax, both federal and state combined was 18 cents; today it's 36.4 cents. The interest on G.O. bonds then was 6.84, compared to 5.23, a much lower interest rate on bonds today. And the unemployment rate in the State of California was 5.1 at Loma Prieta; it was 9.4 at Northridge.

The Governor and I will clearly support that belief that the economy of the state continues in a fragile state, with recovery being very slow, and that a sales tax applied is an instantaneous withdrawal from the economy of a certain amount of money, which does not happen when bonds are sold or short-term notes.

The people who give up the money are the investors in the notes or the bonds, and they don't draw it from the economy. And so, I believe that those thoughts certainly are among those that the Governor has in his mind, and I certainly recognize that the economy cannot stand too many hits. And so, I would suggest that that's the driving --

SENATOR AYALA: Given all the things you just spelled out here, bond issues are paid from the General Fund. And where does the General Fund get the money but from the taxpayers?

MR. DUNPHY: They have been, sir, except this year, I



believe, the State Highway Account is providing funding for the bonds.

I know that typically G.O. bonds are paid for from the general revenues. They're paid in the future as opposed to current, and I think that's what we're talking about.

SENATOR AYALA: Again, the General Fund is provided by taxes all over the state, is it not, the General Fund.

MR. DUNPHY: Just like the sales tax.

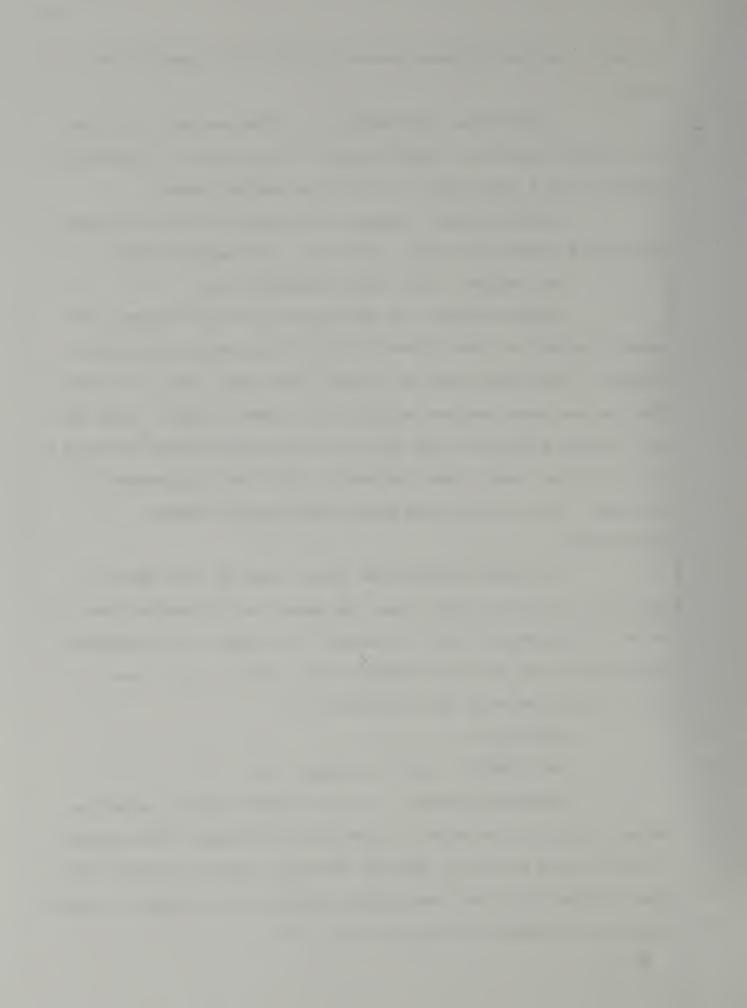
SENATOR AYALA: So who are we kidding when we talk about a sales tax, and I know tax is a dirty word to a lot of people. I pay them, too, so I don't like them. But I'd rather pay for two years and not string it out over 40 year. When you get through paying for the bond, it'll be three times, two and a half to three times, what the bond's value was, the amount of the bond. You'll be taxing people that come in other generations.

It doesn't make sense to me, when we talk about a sales tax, and we all say, tax, you know, it's election time, so we don't talk about a tax. However, we do pay, to be redundant, we pay the bonds from the General Fund, which is tax. So, I don't understand what the difference is.

Thank you.

MR. DUNPHY: You're welcome, sir.

CHAIRMAN LOCKYER: I think Senator Petris wanted to perhaps follow up on some of those kinds of issues, but perhaps I could, since he had to step out briefly, call on Senator Kopp, whom I think is in the same policy universe with respect to some concerns or questions he might have.



SENATOR KOPP: Thank you, Mr. Chairman and Members of the Rules Committee.

I don't want to prolong the discussion which Senator Ayala instituted with respect to the funding deficiency in the State Highway Account, and the funding deficiency for seismic safety retrofitting. My views are well known, and obviously, they're at variance with Mr. Dunphy's and with the Governor.

I'd just add, perhaps, a footnote to that line of inquiry by Senator Ayala. And that is the abandonment of the time-honored policy of using gasoline tax money for not only the projects themselves, but also for retrofitting and for reconstruction. And that has certainly other elements than a sales tax. Plainly and simply, the gasoline tax is the quintessential user's fee: those who use it should pay.

And I'll add one more footnote, and that is, I hear discussions about a vehicle mile tax. And that's my first question to Mr. Dunphy.

Is there advocacy of substituting a vehicle mile tax within the Agency?

MR. DUNPHY: Senator, there's no discussion that's come to my mind.

I believe that there are discussions, and I think appropriate discussions, relating to the structural funding problems associated with transportation, particularly the highway system.

Yesterday, during Ms. Schafer's hearing before this body, a number of people discussed the zero emission vehicles, which are being mandated by the state. The alternative fuels,



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ethanol particularly, which is taxed differently from gasoline taxes. And intrinsically, the increased efficiency of automobiles to get more miles per gallon, and therefore you collect fewer taxes per gallon.

So, there is an increasing attention being paid to the manner in which highway, particularly, let's call it transportation improvements and maintenance, is paid for.

And in that context, I would also call your attention to a statement that I made at the time that I appeared before the California Transportation Commission, wherein the Governor has asked that I gather together a group of business people and transportation people around the state to examine current issues, of which transportation funding should be a component. And that it needs necessarily to address a vehicle mile tax, if you will. I think also we cannot avoid talking about congestion pricing and/or pollution pricing, and those ways in which we fund and construct our freeways.

SENATOR KOPP: Well, I want to divorce congestion pricing and pollution pricing from vehicle miles.

So that my colleagues are informed on it, that's based on the concept that the more miles you drive, the more tax you'll pay, rather than the gasoline tax, which is based upon the amount of gasoline you consume, which in itself is a motivator to drive an automobile that obtains more mileage per gallon of gas, and that in turn has benign consequences as far as pollution is concerned.

But what also caused me to ask the question about the discussion is that some of the people who have been mentioned



for this task force that you're convening are people who are advocating a vehicle mileage tax. I want to state that I am opposed to that, strongly opposed to that tax. So, that concerns me that some recommendation to that effect may arise from the conference.

The second matter that I want to inquire into is what has happened with respect to seismic safety retrofit of toll bridges. We have nine toll bridges in the state system, starting with the Coronado Bridge, and then the Vincent Talmadge Bridge, and then the Dunbarton Bridge, the San Mateo-Hayward, the Bay Bridge, Richmond-San Rafael, and the Benecia-Martinez Bridge in Antioch, and Carquinez.

One of the important issues, one that I discussed with you in Senator Lockyer's office last month, was the budget agreement that provided that for the fiscal year '94-95, \$136 million would be appropriated from the State Highway Account for the seismic safety retrofitting needed on all, as I remember, except two of those bridges. There were two, as I remember, on the Bay that weren't part of that list.

And I was surprised, and that was the reason for the meeting in Senator Lockyer's office, to find that only \$40 million was appropriated from the State Highway Account for 1994-95, and that the balance of about \$90 million would be fought all over again the next fiscal year and probably the fiscal year after that as to whether that money should be appropriated from the State Highway Account or from the toll bridge revenue sub-account.

The agreement was to settle the \$136 million for



'94-95, because no state agency can enter into a contract without having budget authorization for the full amount of the contract. And a \$136 million contract signed during this fiscal year must have budget authorization for the full amount, even if, as you stated in that meeting and as has been reiterated in a letter from the Director of Caltrans, even if only \$40 million can be spent in this fiscal year.

And the budget control language, for the benefit of the Members, the budget control language in this year's budget stated that Caltrans couldn't use toll revenues for seismic retrofit until all Regional Measure 1 projects were completed. Regional Measure 1 was approved by the voters in seven of the nine Bay Area counties in November, 1988, that raised the toll to a buck on those bridges; on six of the seven it was less than a buck. And it raised the toll, based upon the promise to the voters, of specific projects, like a new span on the Carquinez going westward. That one was opened in 1927; should be replaced and other new projects.

Now, the Governor vetoed that language, but with the assurance -- and it's too bad Senator Lockyer isn't here -- but the assurance was to him that the \$136 million would be appropriated from the State Highway Account for that seismic retrofitting.

Now that's been reversed. That is a very serious subject with me, Mr. Dunphy.

I guess I can ask you how you justify or how it's justified, but it probably won't alleviate my concern or my agitation about it. To put it in plain words, it's almost as if



you have to get a signed contract, because the year before, I went through that as far as the budget was concerned. This year, Senator Lockyer did, and it's like you have to have a signed contract that's somehow enforceable in the courts. That's \$90 million that's been taken away.

And I know that next year, you'll want to take it out of the toll bridge revenue sub-account; right?

MR. DUNPHY: Well, Senator, there are probably a number of discussions that could ensue. I'm not exactly -- where to begin.

But first, let me emphasize that I consider it one of my fundamental responsibilities to assure that all of the Bay bridges, all of the toll bridges, are seismically retrofitted.

I do not personally come down on the side of where that revenue should come from. Each of the last two years, the Legislature and the Governor's Office have had a debate and discussion on what was deemed appropriate. And I think there clearly is a difference of opinion.

I believe that there is a -- there are a body of folks who would believe that it is appropriate that revenues from the toll bridges be used to seismically retrofit those bridges. Much in the same sense as you have referred to gasoline tax as being a user tax, those who use the bridges are also users of a facility that could be paid for from their use of those bridges by tolls.

SENATOR KOPP: So, they shouldn't have to pay gas tax for the gas used going across those bridges?

MR. DUNPHY: I'm not suggesting that, but that the



folks in Alturas, or Chico, or Imperial Valley, who never use the bridges, would indeed have their highway improvement money diverted to the improvement of the bridges. Should the State Highway Account --

SENATOR KOPP: Are those bridges part of the state highway system?

MR. DUNPHY: Yes, sir.

SENATOR KOPP: So then, logically, I shouldn't have to pay tax on the gasoline I use going across the bridge, because otherwise, I'm paying twice. I'm paying the tax on the gasoline I use up, and then I'm paying the toll in addition to that.

MR. DUNPHY: Well, that's what good arguments are made over.

SENATOR KOPP: Isn't that fact irrefutable? Aren't I paying tax on the gasoline I use up?

MR. DUNPHY: Yes, you are.

Let me also remind you of another quirk in the law, if you will, that the federal government provides no funding for the restoration of bridges that receive tolls that are used for other than simple bridge maintenance. Therefore, if you were to take the \$650 million --

SENATOR KOPP: Let me stop there. There's a quirk to that quirk, too. The federal government paid \$60 million for resurfacing the deck of the Golden Gate Bridge. And it did it on the rationale that the Golden Gate Bridge District operated bus transit service.

Bay Bridge tolls are used in large part to defray the



costs of operating the AC transit service, and BART and the Muni. So, there is a parody of use of money.

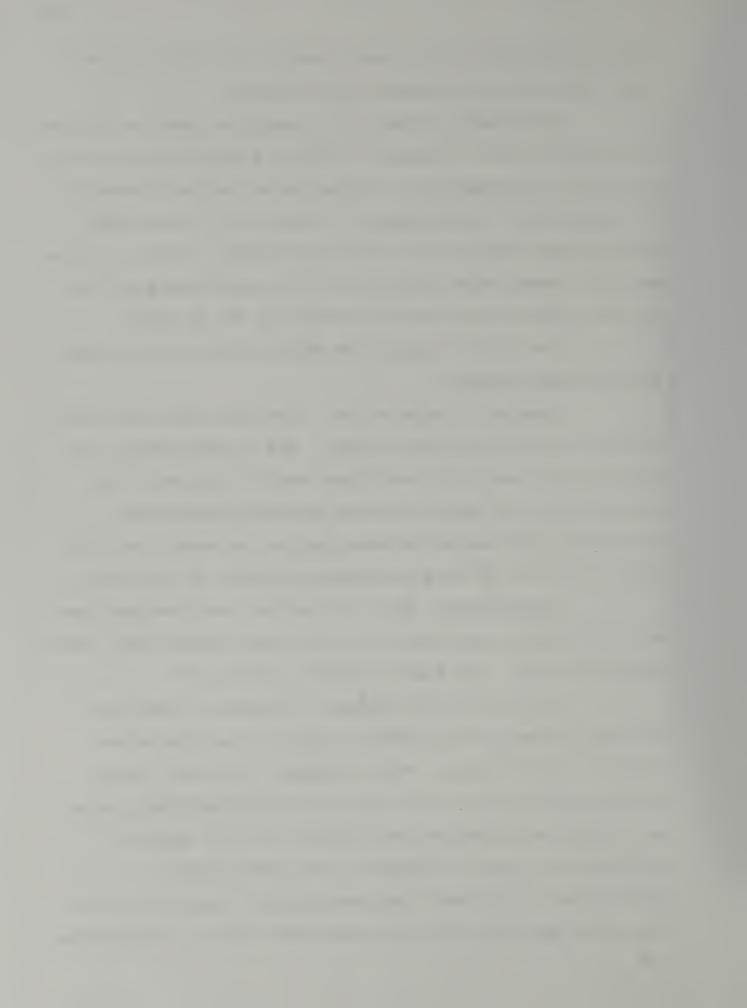
MR. DUNPHY: That is -- I would not question that you are correct in that. However, I think I'm equally correct that the federal government will not provide any matching money for the restoration of the bridges. And that if -- if the \$650 million comes totally out of the State Highway Account, with no matching federal money, that draws down significantly on the available State Highway Account funds that can be spent.

So, it is a siphon that draws a great deal of money into the state bridges.

Senator, I think you and I both know the need exists currently to retrofit those bridges. And I have directed the Director this year to do everything that he can toward the restoration of the bridges through basically preliminary engineering, and some soils investigation, et cetera, and will spend it all out of the State Highway Account, as the budget --

SENATOR KOPP: That's 40 million, and then next year, we'll be fighting about allocating next year \$52,810,000. We'll fight about that. And then in '96-97, \$43,190,000.

Last year, '93-94 budget, I obtained a commitment from Kevin Sloat that the Governor wouldn't veto the budget language on toll bridge. You'll remember last year, again, there was \$40 million, and because the toll bridge sub-account is a continuous appropriation, Caltrans can just spend it, appropriate it itself or spend it, it's continuously appropriated to Caltrans, they were going to take \$40 million. They wound up taking \$8 million, and that was part of the budget



control language. Kevin Sloat assured me the Governor wouldn't veto it. The Governor did not veto it.

This year, the assurance was \$136 million would be obligated from the State Highway Account, and that budget control language was vetoed with the promise, "Don't worry. We will take the 136 million and obligate it to the State Highway Account," and it hasn't been done.

So, we've lost it. We've lost \$90 million.

The third issue that I wanted to comment on was, I have a bill, as you know, which would sever Transportation as a separate agency from Business, Transportation and Housing.

Is it your position, independently of the Governor's, that that bill should not be enacted?

MR. DUNPHY: I would personally oppose it, and I'd be happy to tell you why.

SENATOR KOPP: Well, I don't want to take up time of the Committee here, but I invite the attention of the Committee to the fact that that bill is in Assembly Ways and Means, as I recall. I intend to pursue it and present it. I can secure passage in the Assembly to the Governor for signature.

Circumstances change. But anyway, that's part of the picture that's out there.

That's more informational for the Committee.

Thank you, Mr. Chairman.

SENATOR CRAVEN: You're welcome.

Senator Petris, do you have any comments?

SENATOR PETRIS: Yes.

You commented on the Cypress thing, but I didn't get



the whole thing. I had to leave. I'm sorry.

That's in my district, as you know. I get inquiries all the time as to how we're doing. You mentioned the delay caused by the local objections to the proposed route, and so forth, and now they're finally settled on it over the railroads, and so forth.

MR. DUNPHY: Yes, aright.

SENATOR PETRIS: What's the status of that now? Is that moving ahead?

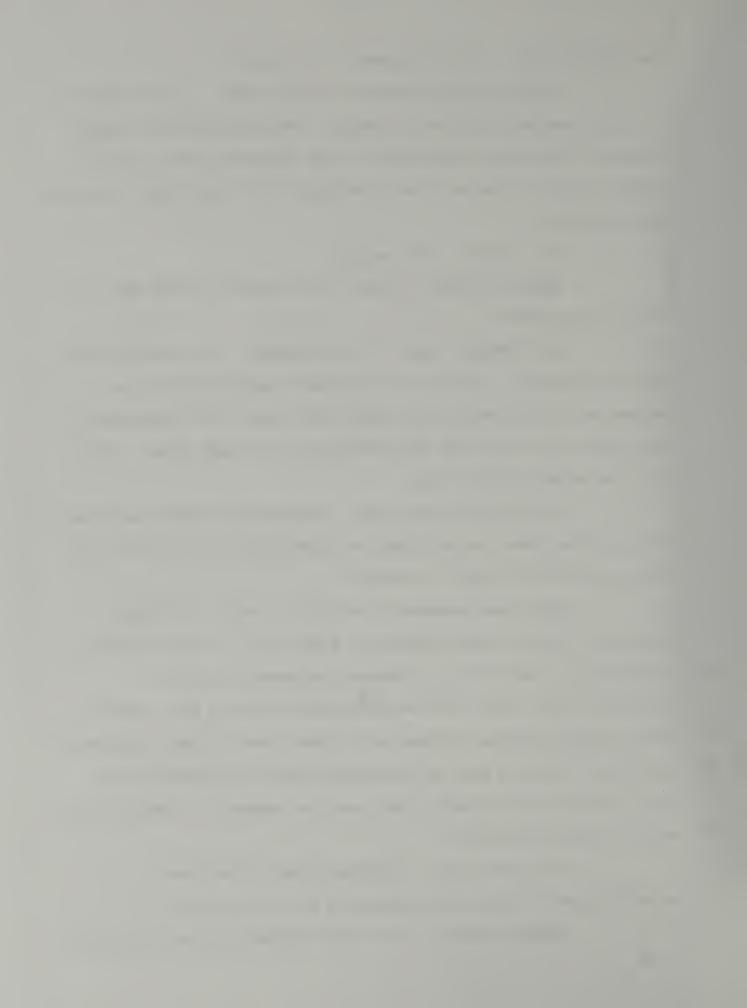
MR. DUNPHY: Yes, it is, Senator. The construction work is divided, I believe, into seven contracts that are sequenced; first being the longest they have to be completed, and those are those that go through the railroad areas. That work is under construction.

I visited it last week. Foundations and columns are being poured, and the railroads are getting out of the way and realigning their lines, et cetera.

Those are contracts in Title C and D. The next contracts will be other letters, if you will, of the alphabet, up through F, and we'll go forward incrementally with a conclusion that they will be constructed about a year faster than earlier program because we've taken some of the contracting techniques that we used at Northridge and are incentivizing [sic] one of the contracts that was the longest in term and at a cost of about \$3 million.

We've been able to secure about a one-year acceleration on the total completion of the project.

SENATOR PETRIS: Does that system involve a different



kind of preplanning and cooperation with the contractor and Caltrans, and so forth?

MR. DUNPHY: It --

SENATOR PETRIS: That was done at the Caltrans building in Oakland, as I recall, and they accelerated that substantially through this other method. I wondered if that's the same idea.

MR. DUNPHY: I can't tell you because I'm not familiar with the Oakland building, but the incentivation takes place by asking the contractors to bid both the dollar amount and the number of days amount. And they add those two together, and the low bidder is awarded the contract.

And we have determined that by both changing the sequence of performing the work, and incentivation, that we can accelerate by about 12 months.

SENATOR PETRIS: That's a lot.

MR. DUNPHY: Yeah, it is. When you look at what we did in Northridge, it's extraordinary, quite frankly.

We've been able to do, and I'll simply add, we've been able to do a similar thing, not quite the same, at the 280 in San Francisco. We will open up, I think -- well, we have opened up five lanes of traffic where we had two on the 280, with -- while traffic is underway, we're continuing the retrofitting, which is a chancy but safe thing, but it shows aggressiveness in trying to get the traffic moving again.

SENATOR PETRIS: You mentioned the importance of maintenance.

MR. DUNPHY: Yes.



.  SENATOR PETRIS: We get complaints in our office about maintenance up and down 880.

MR. DUNPHY: Yes.

SENATOR PETRIS: Is there some project going on now to bring it up to snuff?

MR. DUNPHY: I can't tell you the specific on 880, except to repeat again the importance of maintenance in maintaining in good operating condition the -- all of the highways.

And one of the issues that the state faces is that the traditional life span, life cycle, of a state high is designed at 20 years. We actually secure about a 30-year design life out of our freeway designs.

But if you look at 80, and 5, and 101, they're over 40 years old. So, the need for maintenance will be a growing budget account.

SENATOR PETRIS: Is that a function of the materials that are used for the highway itself, for the road?

MR. DUNPHY: It's a combination. It's not so much a function of the materials that were used as opposed to the use of the highway, the numbers of trucks and vehicles using the roads.

The number -- the number of vehicle miles traveled in the State of California has significantly exceeded the anticipation of 20 or 40 years ago.

SENATOR PETRIS: That seems to be the case all the time. We always seem to fall short, even though we try to allow for it. It's very hard to predict, I know, but that's been a



pattern we've been in for many decades.

Some people, when I try to explain this, point to the Appian Way that's still in use, built by the Romans. I wonder if we should go over there and figure out what they're using, even though horses' hooves are different from gigantic trucks.

Do you have any research being done on that?

MR. DUNPHY: I do not, no, sir. I suppose they built those for elephants.

SENATOR PETRIS: No, that was Hannibal.

MR. DUNPHY: I can't help you.

SENATOR PETRIS: On the goals you mentioned before, on the hiring goals, are you in sinq with the goals; are you above them or below them in personnel?

MR. DUNPHY: The hiring goals pose an intrinsic problem. The goals are not too difficult to achieve.

I would call your attention to the fact that in the Northridge earthquake, the Director of Caltrans set a goal of 40 percent minority, women, all the MBE-WBEs. And he achieved it in almost all of the contracts; sometimes a couple percent below, sometimes a couple percent above.

You've met a goal. You've met a statistical goal.

The problem is what makes up that minority composition, and the problem that the African-American community does not enjoy a sufficiently high percentage to satisfy their particular needs. The women-owned and the Latino-owned enterprises do significantly better, so that there -- particularly in Oakland at the Cypress, the local community is very anxious to have local people --



SENATOR PETRIS: Yes, I was going to come to that also. That came up in meetings, many meetings that were held with Caltrans, about hiring local people.

MR. DUNPHY: We've done -- we've done such things as permitting a new technique of a mentor-disciple, if you will, as a subcontractor to a general contractor. That works like this.

A major -- let's say, a majority contractor with skills and experience, will couple with a minority contractor who either doesn't have bonding capacity or particular experience. And they will permit that to qualify as a subcontractor, meeting goals.

And the mentor effectively helps educate, teach, train, et cetera, the minority contracting company to learn that particular business and to benefit from the experience.

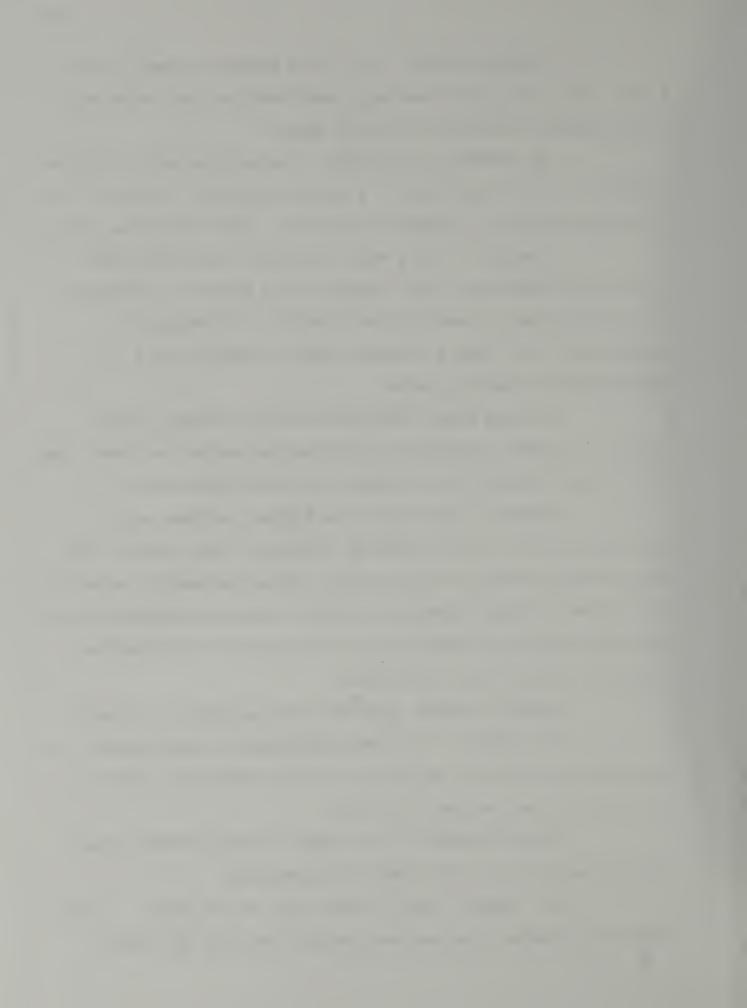
Because I see one of the biggest problems with particularly the African-American community, they haven't had the training and/or the opportunity and/or the bonding capacity to elevate, to help themselves achieve the goals that they want. And this particular mentor-disciple program will provide the kind of training that should help.

SENATOR PETRIS: How long has that been in effect?

MR. DUNPHY: It's been introduced on the Cypress. It
is something that will be going on in your district, and we're
working very hard to make that work.

SENATOR PETRIS: Is it true that the Altamont Pass will be subject to a toll booth, or something?

MR. DUNPHY: Well, I read that in the paper. I have learned I shouldn't believe everything I read in the paper.



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SENATOR PETRIS: It wasn't a press release of yours, obviously.

MR. DUNPHY: No, it wasn't.

SENATOR PETRIS: Or Van Loben Sels. There was a blurb on it in the paper.

CHAIRMAN LOCKYER: I missed that one.

SENATOR PETRIS: Well, you may want to inquire.

CHAIRMAN LOCKYER: I certainly will.

SENATOR PETRIS: I'd like to go over to another department of yours -- you have a lot of responsibilities -- and that's Housing.

MR. DUNPHY: Yes, sir.

SENATOR PETRIS: Particularly farmworker housing. There's been a lot of criticism about the program. I'm sure it's been brought to your attention.

At one time, I carried a lot of legislation relating to expanding our housing for farmworkers, and the problems were that there was very little housing provided, and it was very shabby. I remember in San Diego County, I had pictures of holes in the ground were some farmworkers were living, actually living in holes in the ground. So, if they elevated to a lean-to under some corrugated iron, that was luxury compared to the holes in the ground.

I haven't heard those kind of complaints lately. I'm going back a few years. But I still get a lot of criticism about laxity in enforcement of standards in housing that is provided, especially important in monitoring whatever the private sector provides, as well as keeping an eye on the state.



Are you up to date on housing arrangements that we're trying to make for farmworkers?

MR. DUNPHY: I am conscious of the responsibility of Housing and Community Development to monitor and assure that there is safe and adequate housing for migratory farmworkers.

SENATOR PETRIS: We have about 900,000, I understand, in that category in California; 900,000 migratory farmworkers, a large percentage of whom need housing.

MR. DUNPHY: Yes.

I am reminded of a Legislative Analyst remark that suggested that the Department was, perhaps, lax in its enforcement, and at the same time suggested that since it's a General Fund agency, that the resources available to it almost work in contradiction to the need to do the work. So, there's a paradox involved there.

I think that the budget conditions for the last several years have mitigated against as much enforcement as perhaps is necessary.

SENATOR PETRIS: Well, if you've seen the Legislative Analyst's comments, I think you'll agree that there's a real need for more inspectors. We don't have them.

MR. DUNPHY: We do; we need more budget. And it's one of those problems that each of you as Senators, and Senator Lockyer particularly, are faced with the either-ors, and the alternatives that are sprinkled throughout the budget. It's very difficult.

CHAIRMAN LOCKYER: Well, it may be there ought to be greater effort to get those who benefit from available



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workforces that are healthier because of housing being available to pay a fair share of those burdens. I don't think there's been any real effort to enact fees that are sufficient to cover the enforcement activities.

SENATOR PETRIS: As a matter of fact, the Department has suggested raising the rents. They can hardly afford to pay what they're paying now. The revenue ought to come from some other sources. The state is providing camp sites, and different kinds of housing. We've got to find a way to increase that revenue.

Are you working on that in reaction to the reports you've been receiving?

MR. DUNPHY: I have no current program, Senator. Not that I'm ignoring it; it's an issue that I have not been currently working on.

The Department is aware of the problem and the criticism.

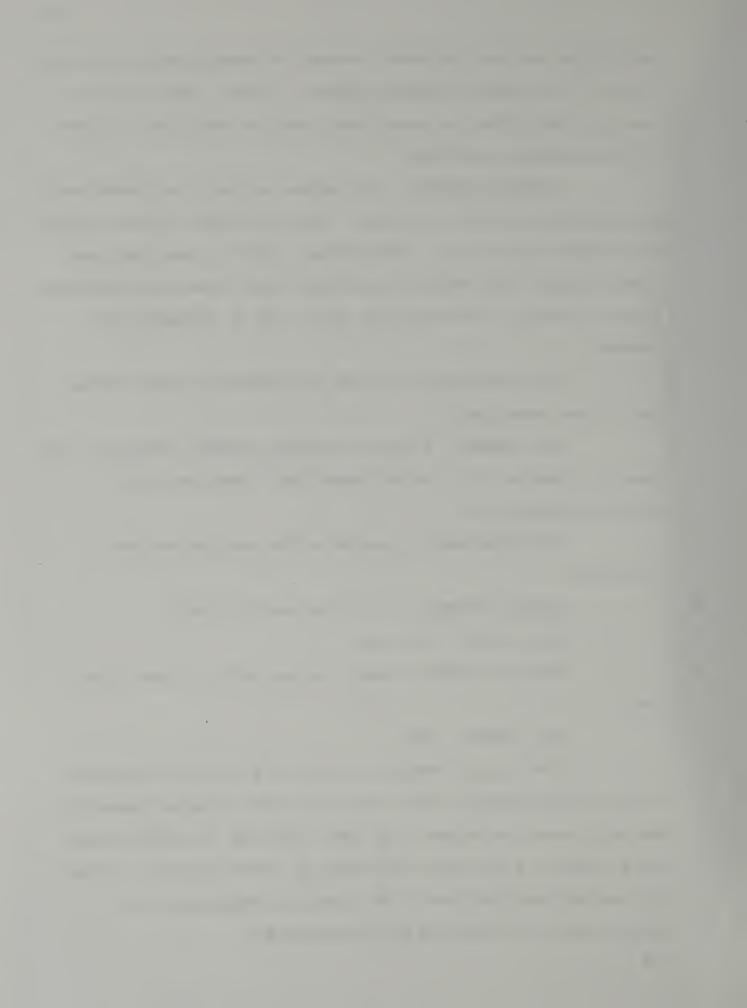
SENATOR PETRIS: Who's the head of that?

MR. DUNPHY: Tim Coyle.

SENATOR PETRIS: Yes, I've met with him from time to time.

MR. DUNPHY: Yes.

The actions that we can take are to try to generate within HCD efficiencies that can cause their internal operating and administrative budget to go down, and that is taking place. There's been a significant reduction in forces because, in part, the housing bond that was to be a part of Proposition 1-A failed, and we're reducing significant staff.



If we can convert some of that staff to enforcement, we can get some help out of it. But otherwise, it comes out of a Budget Act allocation.

SENATOR PETRIS: General Fund.

MR. DUNPHY: Yeah, it is something that needs to be done. I have -- it is -- has come to my attention. I am aware of the need to do it.

SENATOR PETRIS: Does the Governor have a program to improve that situation? Have you recommended something to the Governor?

MR. DUNPHY: Not at this point, sir.

SENATOR PETRIS: Are you planning to?

MR. DUNPHY: I think I should give it the attention that it deserves.

SENATOR PETRIS: I hope so. It's really a blight on California.

These conditions have existed more or less bad for a long, long time. I think it's time we faced up to it, and even if we don't have the money, we ought to have a goal and get as close to it as we can.

I remember carrying legislation when Deukmejian was Governor for a revolving fund, at low interest, 3 percent, to make it available to the private sector. The Farm Bureau supported it. Other individual growers supported it. They said, "If you lend us the money at that rate, we'll be happy to build better accommodations ourselves." And the Governor vetoed it because he didn't think the state should be in the housing business.



I reminded him we were already in the housing business. We had these migrant camps funded by the state. I said, "I'm trying to get you out of the housing business, you know. Let the growers who are willing to do it, do it."

Maybe that should be revived. Would you favor some kind of a revolving fund that, if we had the money, to provide the resources to growers who are willing to tackle the problem?

MR. DUNPHY: I would certainly want that to be one of the options.

SENATOR PETRIS: Well, I hope you keep working on it.

Even without the money, we ought to have a goal so that when the money comes in, we can start catching up. It's really disgraceful, almost a million workers subjected to this perennial lack of decent, adequate housing.

How many more inspectors do you think you would need to have an adequate program?

MR. DUNPHY: I can't tell you that.

SENATOR PETRIS: You're not on top-down on a day-to-day basis; you're above that agency. I'd have to ask Mr. Coyle about that, I guess, to get more detail.

MR. DUNPHY: I think we could probably equate the dollars needed with some budget allocations. They cost so many dollars per PY.

SENATOR PETRIS: That's true.

CHAIRMAN LOCKYER: While we're in the housing universe, another area of some controversy has been trying to motivate local agencies to fulfill their obligations to include updated housing elements in their general plans. It's been, I



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quess, postponed for a couple of years because of budget constraints.

Have you had an opportunity yet to involve yourselves in some of the local housing controversies? I guess they include the local elements, whether they should be postponed again, or keep the nudge going. Additionally, at the state level, the various department or agencies that all have a role, and there's been thoughts about consolidating some of those.

I don't mean the ones that, perhaps, Senator Kopp talked about earlier, of trimming down your Agency to be a transportation focus, but rather whether the unit in the Governor's Office and HCD, and so on, if there should be some integration.

Have there been discussions of those things? MR. DUNPHY: Senator, we have under way a strategic management and consolidation study that's going on in the Agency, because the Agency is undergoing some change.

I would expect that as a policy item, the role in adopting and approving housing elements in general plans would either be reinforced or modified.

I can't tell you where that direction will go, but they still -- they currently still have the obligation to approve housing elements.

CHAIRMAN LOCKYER: There seems to be a lack of vigor from the Housing Department in enforcing local housing element requirements, but I have the feeling you haven't yet involved yourself --

> MR. DUNPHY: It hasn't come to my attention.



1 Nobody's been pounding on my door. 2 CHAIRMAN LOCKYER: What's the strategic plan? 3 mentioned that there's some changes in the Agency? 4 MR. DUNPHY: The Department, HCD. 5 CHAIRMAN LOCKYER: Okay. 6 MR. DUNPHY: HCD has a need to re-examine its 7 function and its mission, and size itself appropriately. 8 CHAIRMAN LOCKYER: And that's ongoing. 9 MR. DUNPHY: Yes, sir. 10 CHAIRMAN LOCKYER: When would that maybe be 11 completed? 12 MR. DUNPHY: I don't have the answer to that. 13 CHAIRMAN LOCKYER: They're in the process of doing 14 that? 15 Yes, sir. MR. DUNPHY: 16 CHAIRMAN LOCKYER: I missed, unfortunately I was with 17 the boss, so I missed Senator Kopp's inquiries, but they're 18 fairly predictable. 19 I just wanted to at least mention, and we've had an opportunity to talk about this before, a terrible unfairness 20 21 that I think is being forced on Bay Area motorists and residents 22 by this and the previous administration. The unfairness in my 23 mind is, how do we finance necessary improvements of a major 24 sort, major improvements, to the bridges in the Bay Area? 25 Recent administrations have followed sort of the path 26 of least resistance, I quess. That is, find some money 27 somewhere; don't try to raise the gas tax, or something that

would be controversial. Just go find some money. And the money

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that sits there is toll revenues, which are continuously appropriated to the Department. They aren't subject to the annual Budget Act.

That will change, by the way, next year. There will not be a budget that gets to the Governor unless that changes next year. I've learned now how important it is to just get it out there, make it real clear. Because what happens is, and your Department's done it again, they commit. They encumber tens of millions of dollars of toll revenues for major rehabilitation projects, clearly in violation of the statute.

The statute -- I happen to know because I wrote it, and I, frankly, cooperated with Caltrans, to my regret; I won't again, because I took them for their word that when they wrote a distinction minor repair and rehabilitation, that they would observe we know what the difference is. Repaving is minor repair. Rebuilding the girders and cement around it, and so on and so forth, is rehab. That's not a minor repair.

But they keep -- driven, I think, by the budget circumstances, and I understand how desperate that makes everybody -- keep skirting that, and trying to commit bridge tolls to projects that should be borne by the Highway Account.

Now, the tax effects, separate from the transit effect, is those motorists are double-taxed. They pay their gas taxes like everybody else does, so if you're in San Diego, or San Bernardino, or whatever, the motorist pays gas taxes, and that's used to improve I-5, or what have you. But if you cross this bridge, you pay your gas tax and you pay your toll, and Caltrans expects to use the toll money for repairs of a major



sort, rather than the Highway Account. And it's unfair, and it's a form of double taxation.

MR. DUNPHY: Senator, one of the problems is, on every state highway in the state where State Highway Account funds are utilized, they have a federal match. So, you get a lot for your money.

On the bridges, on the toll bridges, the federal government gives you nothing. So that there's a disproportionate amount of money from the State Highway Account that has to be drawn to those bridges.

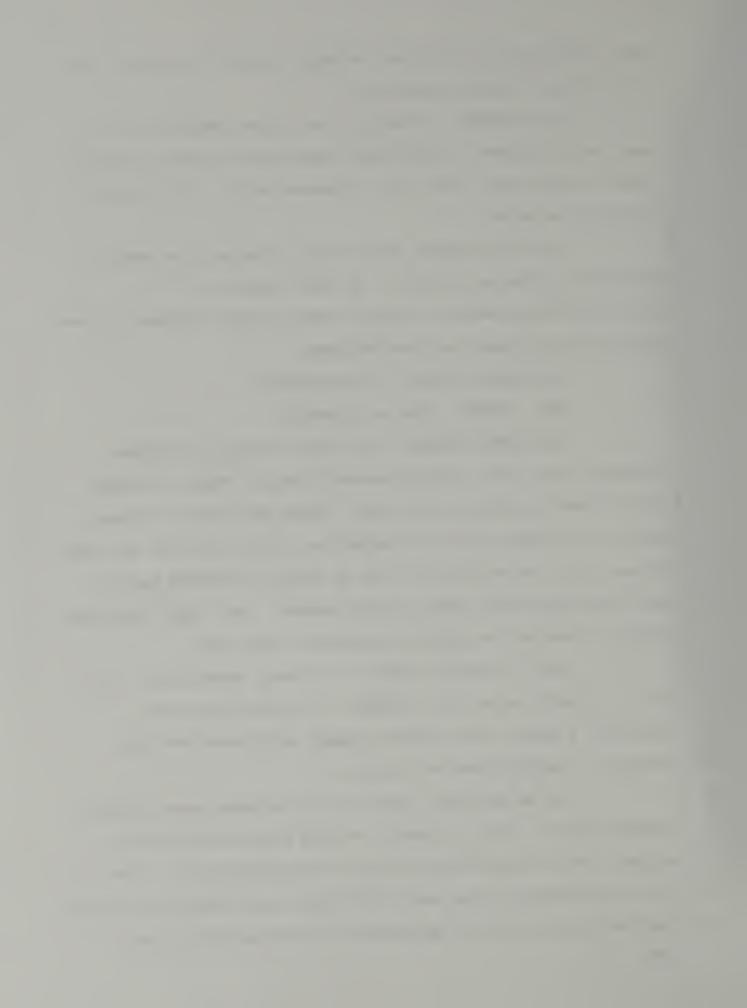
CHAIRMAN LOCKYER: I understand.

MR. DUNPHY: That's a problem.

CHAIRMAN LOCKYER: But that's true of a highway somewhere that isn't in the federal system. There are major state highways all over the state. They don't get a federal match, or if they do, it's a modest one. So, you have the same dilemma, but you continue to try at least to program work on some state corridors that are not federal. We always emphasize federal, because the match is desirable, obviously.

Well, I mention that. It's very frustrating. It's not your fault, other than, again, it's your policy and emanates, I guess, from the Department of Finance and the Governor's perspectives on funding.

Let me mention, while I'm in the same area, another related issue: tolls on roads. We had this demonstration project that was authorized during the Deukmejian era. The bill, unfortunately, was not written with sufficient clarity and specificity, so part of the problem is our bad work. But



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basically it said, I think, five projects are authorized, several of them, and Caltrans will write the specific contracts for implementing those private toll facilities.

The contract that they executed, I think generally the one I know in greater specificity is the proposal that would have run through Contra Costa, Solano and Alameda Counties. It may be the worst piece of legal work I've ever seen. They ought to be hauled off somewhere for malpractice.

And there are stories that are told. I'll tell you

Assemblyman Katz is at lunch with a group of lawyers that are his friends that had nothing to do with this particular contract. But the same firm, a different group of lawyers, was having lunch in the same restaurant. They all managed to intersect and interact, and at the time, these contracts were controversial because they do everything. They confer air rights; they don't make them pay their fair share; they have land use impacts that were never examined; contracting out. It goes on and on.

Group Two that represented the Toll Authority, the business consortium that was in the room, is laughing about how they took Caltrans; that the bozos did a bad job of negotiating these contracts. And they're very proud of it, and informing the other group that's with Mr. Katz, from a big law firm in Southern California.

Well, that's just the anecdote that runs, and I think a correct one. They did a bad job. They probably won't get this big project in the Bay Area to ever economically make



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sense, so perhaps it's not a thing to spend time on now, although they keep trying.

The contracts, you know, in San Diego and in Orange County were kind of no-brainers. Just add another lane in the Even someone in Caltrans could have figured that one That's now a toll road in Orange County.

I don't know. You may not need to respond, and I'm sorry to sort of rattle on here.

That's okay. Actually, Senator, I enjoy MR. DUNPHY: the opportunity, because I think it's at these opportunities that you get to exchange a little philosophy and ideas.

And I think the idea of a toll road is one that provides a utility that the state cannot currently provide. therefore, you're left with the argument of, perhaps, the social equity of creating a facility that is paid for by its users, and perhaps denied to others because of a lack of income.

CHAIRMAN LOCKYER: I agree, and that's the fundamental issue in my mind.

MR. DUNPHY: Looking at the state today and its State Highway Account revenues, and revenues from all sources to build facilities, we're desperately short. And so, when you can get the private sector to build such a toll road, and it provides a utility that is, perhaps, only cost-constrained, it is a utility. It does revert to the state in its ownership.

So, there is a quid pro quo. It certainly has a long-term benefit, and perhaps it has a short-term question.

So, you will always have philosophical arguments about that, and I think this is a great opportunity for me to



express that. CHAIRMAN LOCKYER: I worry about its reversion is 3 about the time it would wear out, which again raises kind of an 4 economic question. MR. DUNPHY: Yes, but if it is maintained through its 6 35-year life, then it should revert --7 CHAIRMAN LOCKYER: Be okay, like the Appian Way? 8 MR. DUNPHY: I'm going to have to go visit that. 9 CHAIRMAN LOCKYER: You were almost 25 years in the 10 construction business. 11 MR. DUNPHY: Thirty-two. 12 CHAIRMAN LOCKYER: Was there an emphasis? What kind 13 of construction did you do? 14 MR. DUNPHY: Commercial, industrial, institutional. I built libraries, hospitals. I was a contractor, not a 15 16 developer. That is, I built for others under contract. It was 17 a wide variety of those kinds of things. 18 CHAIRMAN LOCKYER: What would have been the biggest 19 single job? 20 MR. DUNPHY: Well, it depends on -- I should say I'm 21 I built a number of very large buildings for one of our 22 vanishing industries: General Dynamics. I built probably two 23 or three million square foot of engineering office buildings, 24 manufacturing facilities, in Rancho Cucamonga. I built all of 25 those buildings in Pomona, San Diego.

CHAIRMAN LOCKYER: Me, too.

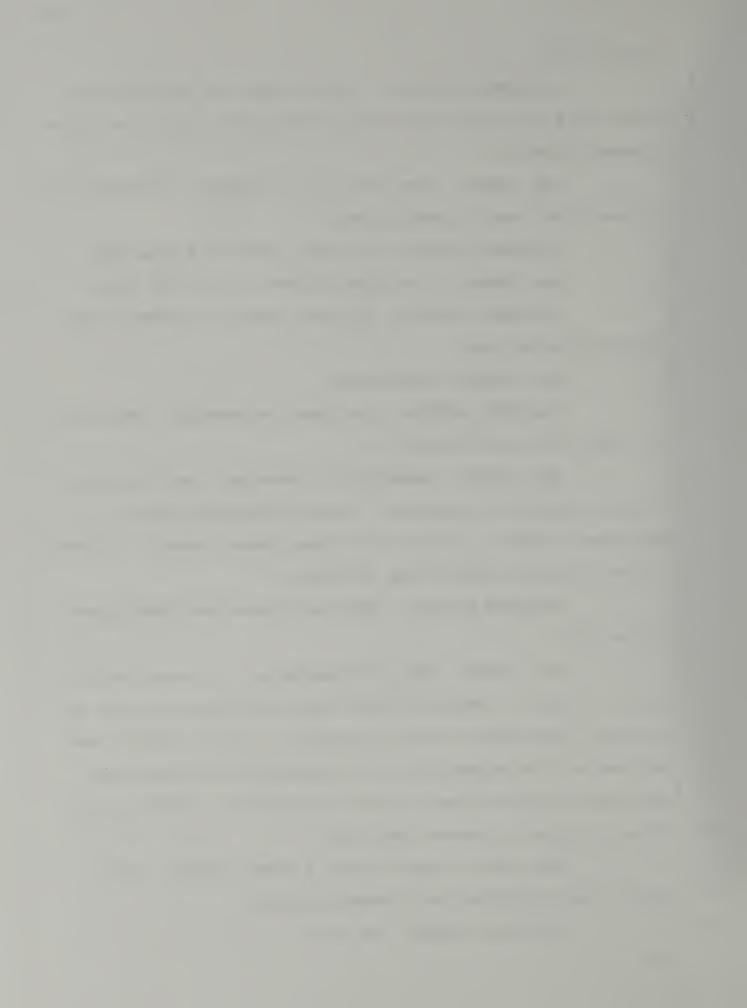
hate to see 50,000 people go someplace else.

They were a great client, a great industry, and I

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1 MR. DUNPHY: But at any rate, that was the kind of 2 experience that I did. 3 CHAIRMAN LOCKYER: You've been in your job since 4 early January? 5 MR. DUNPHY: January, yes, sir. 6 CHAIRMAN LOCKYER: What's been the hardest issue, or 7 the hardest decision so far? 8 MR. DUNPHY: I can't say that there have been hard 9 decisions. 10 I think the thing that I have to get accustomed to 11 first is my interaction with government, the Legislature, budget 12 issues, which I -- the budgets are Byzantine compared to what I 13 went through in running a construction company, and seeking 14 performance, and so forth. 15 There is a learning curve in that regard. However, I 16 feel fortunate that my experiences have included construction, 17 which gives me some familiarity with what goes on at Caltrans. 18 I was on the board of a bank for a number of years, so the 19 banking and S&L side is okay. I was always brought into 20 contract with real estate and real estate appraisal, and so 21 forth. 22 23 24

My gross experiences have caused me to feel somewhat comfortable in the position. And fortunately, I've decided the job has to be done from Sacramento, so I've leased a home here. My wife and I have reached a stage in life where she likes to do quilting, and I like to work. So, I stay here and work, and she quilts to her heart's content in San Diego.

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We have wonderful quality weekends. I go home Friday



night, come back Monday morning.

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CHAIRMAN LOCKYER: We're all familiar with that life style.

> It works very well, really, for us. MR. DUNPHY:

CHAIRMAN LOCKYER: Do you ever get alarmed at what seemed to be the project overhead in some of the major construction projects that Caltrans does? As I recall the figures, state law says no more than 20 percent, and the Analyst and others suggest that maybe it should be at 25.

If this was discussed earlier --

MR. DUNPHY: It was not.

CHAIRMAN LOCKYER: I would assume that as a person from the private sector, you've looked at that; had some thoughts about is it true, is it a problem, what to do about it.

MR. DUNPHY: I will repeat the part of the discussion that you and I had in your office, where I believe the greatest challenge that I have is what I term the reformation of Caltrans, and assuring its responsiveness to its task, and finding a 100-year old organization that has developed a culture that's very unique unto itself, that all of its culture and programming are based on historical issues. And the relationship between departments and political appointees is one that the departments, I believe, have a general perception that they can sweat out the appointees until the next one comes along, and they don't change too much.

So, clearly, my orientation is to make an impact, to try to make Caltrans a more efficient organization.

It is -- I can tell you that following, and even

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prior to the SRI study, the CTC, the California Transportation Commission, was on Caltrans' case about reducing its support and its overhead. That began at that time, but the SRI report built a fire under everyone, and so that reorganization, creating information networks that talk to one another instead of having 48 different independent, stand-alone computer systems, and reorganizing the department so that you can centralize some of the primary functions -- accounting, purchasing, and so forth -- and get them -- every district had it before, and the headquarters was acting like a district, doing work, and we're separating that and making it a stand-alone district.

And then the Governor insisted on a pay for performance analysis, and trying to get to regulator control, if you will, to permit the reward of folks who do better than others, and to perhaps deny improved salary levels to those that are considered not to be performing. I think that's --

CHAIRMAN LOCKYER: Are you doing that?

MR. DUNPHY: Yes.

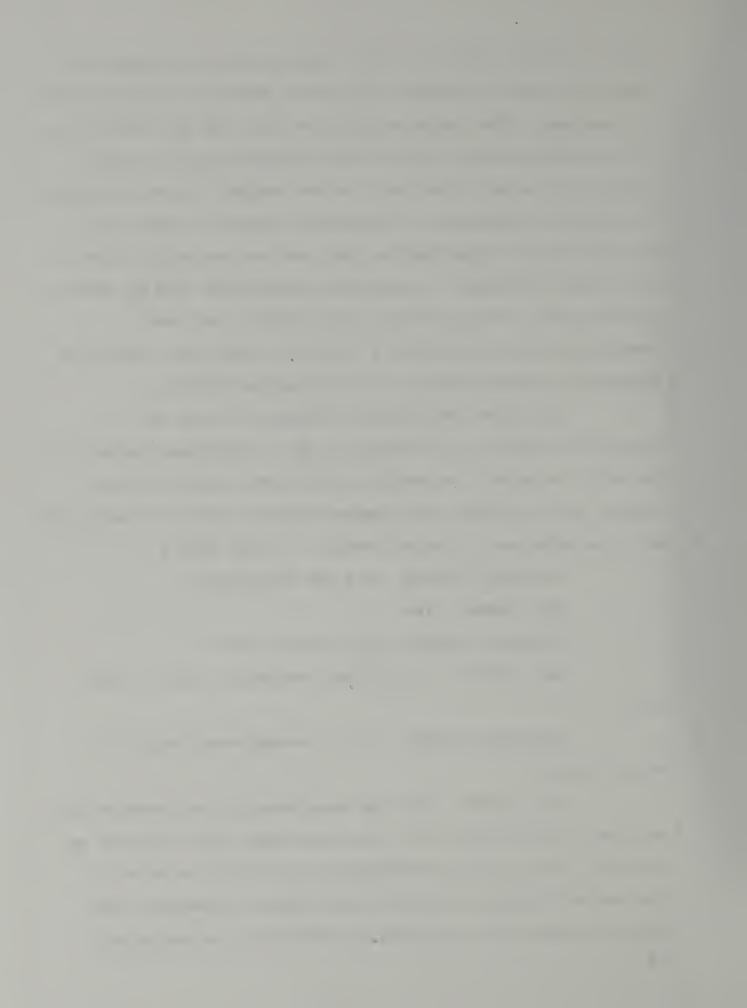
point.

CHAIRMAN LOCKYER: How far down the --

MR. DUNPHY: It's in the management ranks at this

CHAIRMAN LOCKYER: Is it contemplated that would extend further?

MR. DUNPHY: What the department has volunteered for, and what I would like to do, is to encourage using Caltrans as, perhaps, a model of the reformation of the civil service, so that we can perhaps introduce those kinds of incentives that perhaps differentiate and permit good work to be recognized.



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It is so difficult within the constraints of all the levels of salary levels, and I can't begin to understand the way that it's fragmented to different levels. And it is so difficult to change, basically, the structure of organizations. They find ways to run sideways.

I think the idea of a reform, and using an agency to begin that process, would be worthwhile.

CHAIRMAN LOCKYER: It sounds like something you have some enthusiasm for.

MR. DUNPHY: I do, and I would encourage you to become interested in that.

CHAIRMAN LOCKYER: I'm interested.

I'm not persuaded that contracting out, which has been the sort of historic solution or part of it, that it actually saves any money. But we'll debate that at a more appropriate time, with everybody's studies and --

MR. DUNPHY: But if you will permit, I just love these opportunities, really, contracting out does a couple of things. And without regard to how much it costs, because I think the accountants haven't settled out on how much what costs. But assuming that they may be similar, the availability of a resource in the private sector gives you an opportunity to create within Caltrans an optimum size staff. And if you get surges in work, you've got the private sector that's trained and skilled that can do that. So, you can actually create an enhanced facility if you have a private sector that has highway and/or bridge engineers contained within its structure.

Many of the former Caltrans people, as you know,



gravitate into private sector prior to retirement or even sometimes after retirement.

It isn't a matter that the skill doesn't exist, but it has to be honed by reuse. So, it provides, again, a utility, so that you can come up with an optimum staffing level for Caltrans and use the private sector for its surge, if you will, of added business.

When the surge is over, you're back to an optimum situation.

CHAIRMAN LOCKYER: When do you surge? I haven't noticed any.

MR. DUNPHY: Northridge, Loma Prieta.

CHAIRMAN LOCKYER: Okay, so you mean in times of emergency.

MR. DUNPHY: Yes.

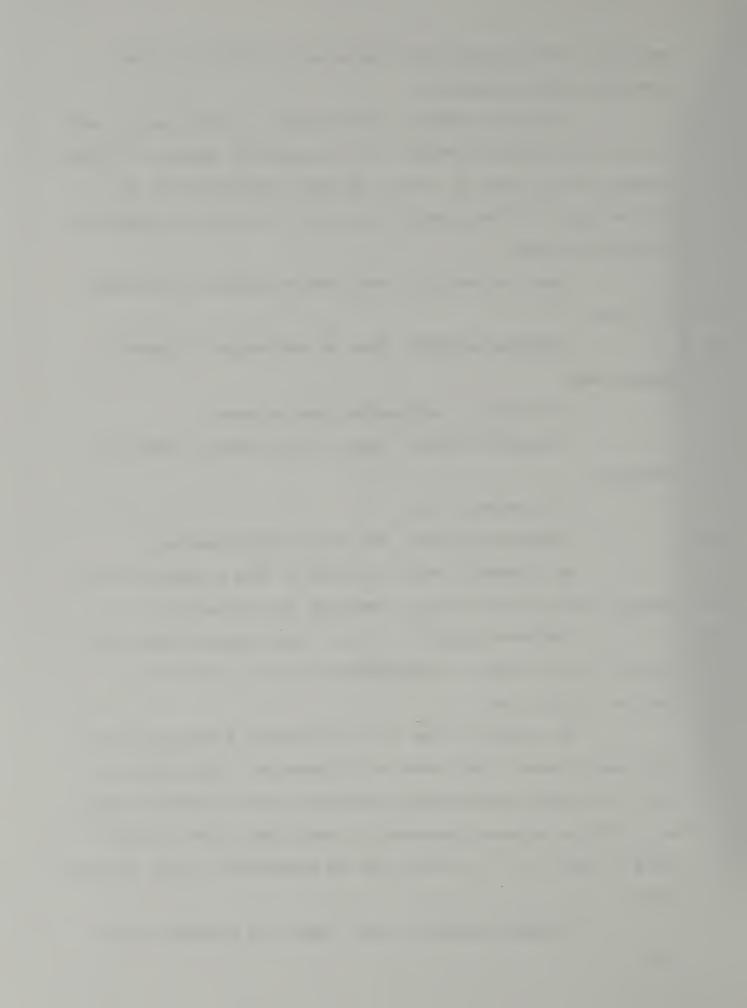
CHAIRMAN LOCKYER: Not as an ongoing matter.

MR. DUNPHY: Well, you have to have a capacity that handles the projects that are required, and those are --

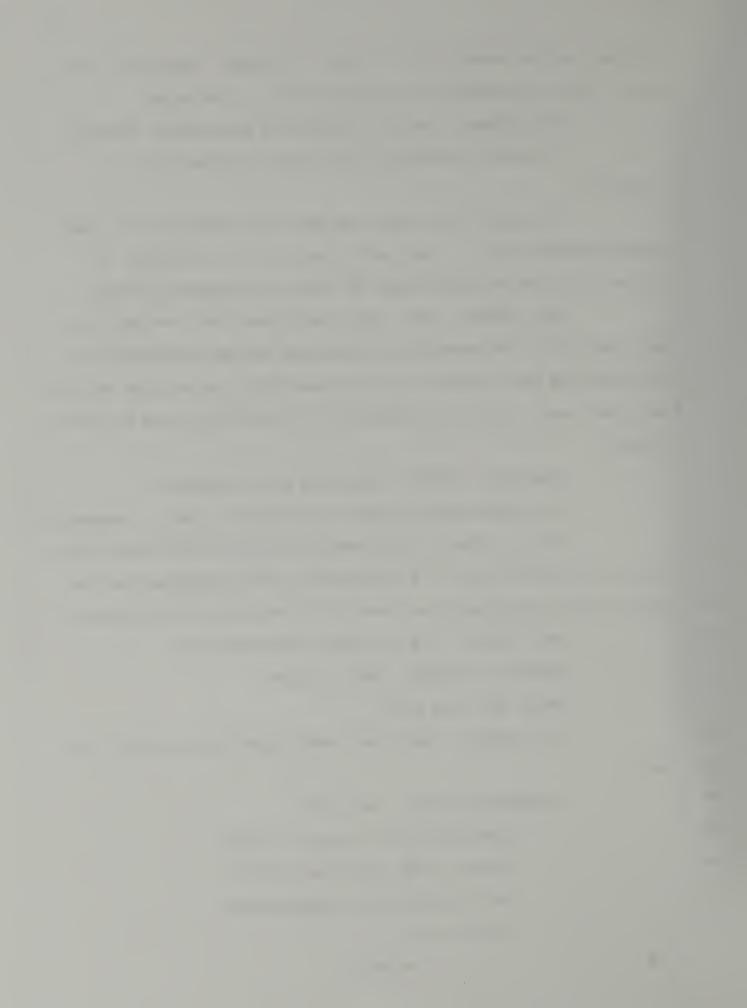
CHAIRMAN LOCKYER: A lot. Just bridge review, and there's a whole bunch of people that do that in kind of a routine, ongoing way.

MR. DUNPHY: Some of it is done on a routine basis, and I would expect that there will always be. As a matter of fact, the seismic review group suggested that we should always be -- have an ongoing, because you never know where a fault's going to show up. It's just like the Northridge was an unknown fault.

CHAIRMAN LOCKYER: Well, there are probably other



1 things. We've taken a lot of time. I, again, find you to be a 2 very, very interesting and pleasant man to work with. 3 MR. DUNPHY: Well, I enjoy the experience, Senator. 4 CHAIRMAN LOCKYER: We'll have you come back 5 regularly. 6 We could talk about the DMV cost overruns, but they 7 mostly predate you. I just note that that is a problem, of 8 course, and you've worked with Mr. Katz and Kopp and others. 9 MR. DUNPHY: Yes, and I might add that you perhaps 10 are aware that the Governor has assigned me the responsibility 11 of reviewing that carefully and determining what actions need to 12 be taken, and I will be doing that in concert with the Attorney 13 General. 14 CHAIRMAN LOCKYER: Anything else, Members? 15 Is there anyone present who wished to make a comment? 16 This is also a confirmation that does not need action 17 until next January, and I'd recommend to the Committee that we 18 take it under submission at least for time, and we'll consult --19 MR. DUNPHY: I'm a January 4th appointee. 20 CHAIRMAN LOCKYER: Yes, you are. 21 Thank you very much. 22 MR. DUNPHY: Thank you, and I hope you do invite me 23 back. 24 CHAIRMAN LOCKYER: Good luck. 25 [Thereupon this portion of the 26 Senate Rules Committee hearing 27 was terminated at approximately 28 11:00 A.M.]



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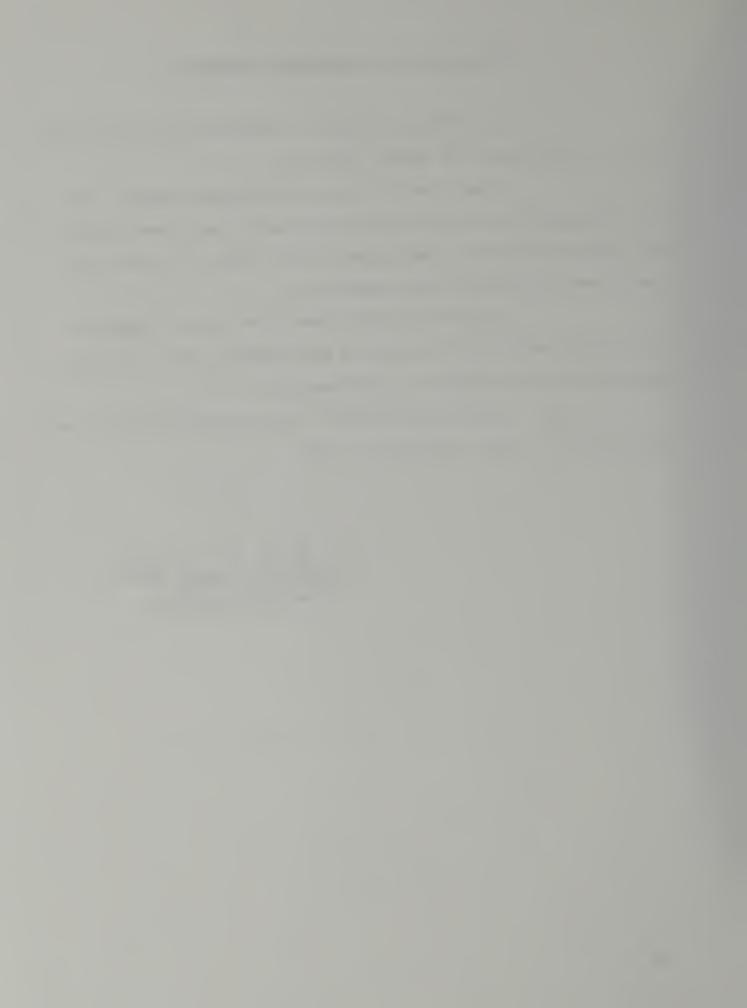
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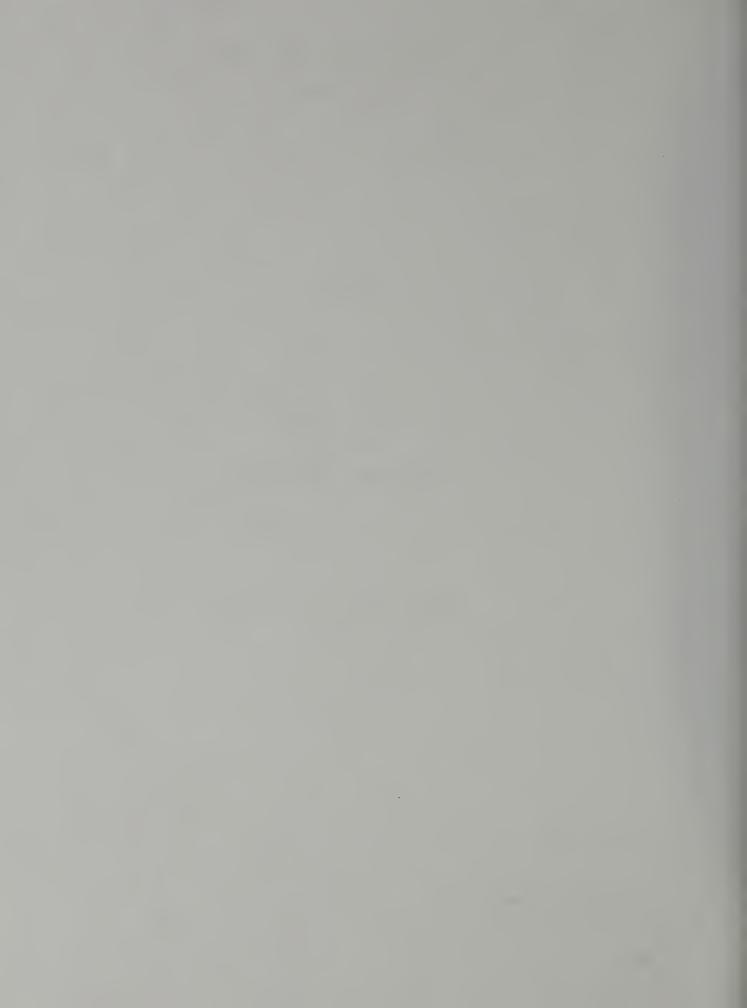
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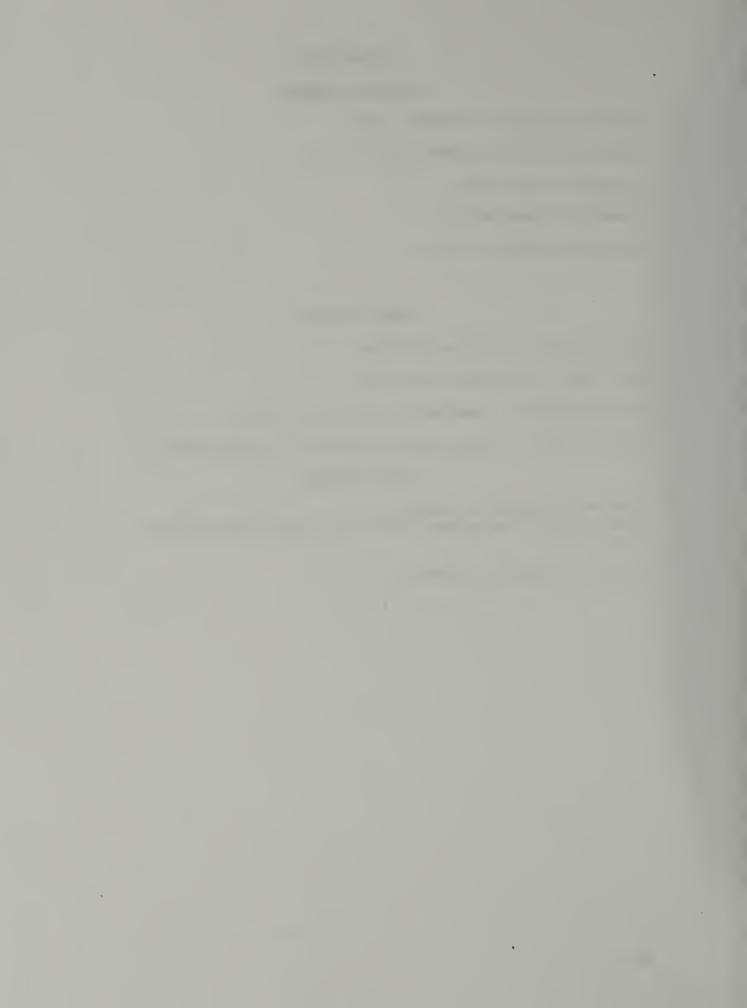
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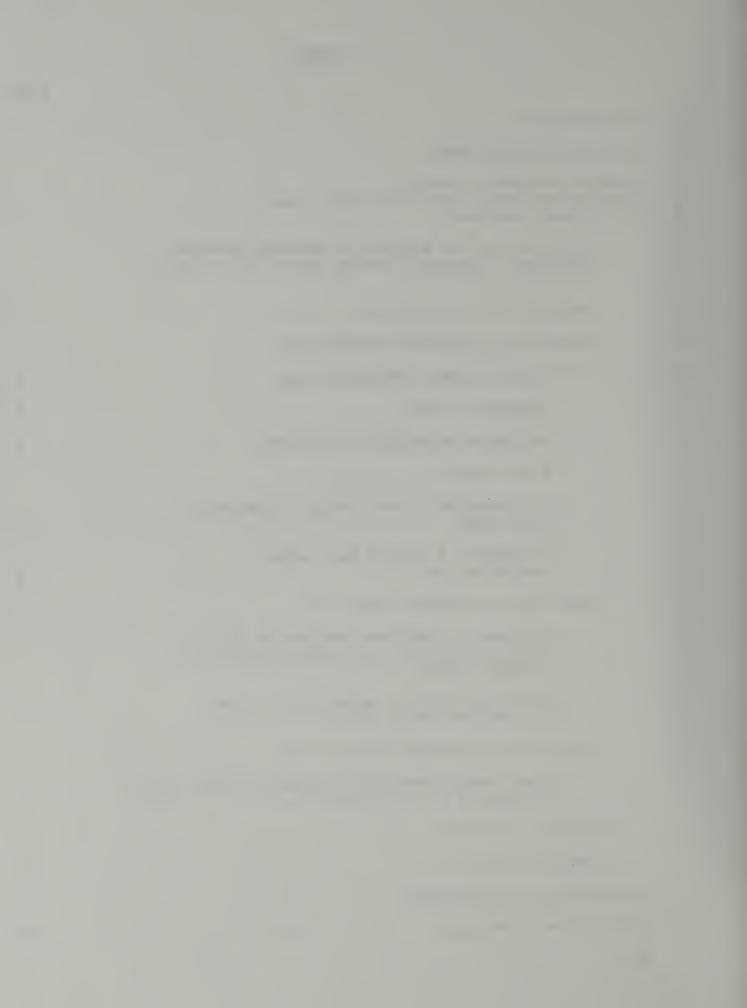


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4	SENATOR WILLIAM CRAVEN, Vice Chair
5	SENATOR RUBEN AYALA
6	SENATOR ROBERT BEVERLY
7	SENATOR NICHOLAS PETRIS
8	
9	STAFF PRESENT
10	CLIFF BERG, Executive Officer
11	PAT WEBB, Committee Secretary
12	RICK ROLLENS, Consultant on Bill Referrals
13	NANCY MICHEL, Consultant on Governor's Appointments
14	ALSO PRESENT
15	JANANNE SHARPLESS, Member State Energy Resources Conservation and Development Commission
17	SENATOR HERSCHEL ROSENTHAL
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19	
20	
21	
22	
23	
24	
25	
26	
27	



# INDEX

2		Page
3	Proceedings	1
4	Governor's Appointees:	
5	JANANNE SHARPLESS, Member State Energy Resources Conservation and Development Commission	1
7	Introduction and Support by SENATOR HERSCHEL ROSENTHAL, Chairman, Senate Committee on Energy and Public Utilities	1
9	Background and Experience	2
10	Questions by CHAIRMAN LOCKYER re:	
11	Thoughts about Reorganization	4
12	Comments to PUC	5
13	Ratepayer-subsidized Activites	6
14	Major Goals	7
15	PUC Functions Versus Energy Commission	
16	Functions	7
17	Government's Future Role after Restructuring	8
18	Questions by SENATOR AYALA re:	
19 20	Problems or Barriers Preventing Shift to Increased Use of Alternative Fuels for Transportation	9
21	Need to Educate Driving Public about	
22	Alternative Fuels	11
23	Questions by CHAIRMAN LOCKYER re:	
24	What Energy Commission Should Consider Doing to Address Air Pollution	13
25	Motion to Confirm	14
26	Committee Action	14
.7	Termination of Proceedings	14
.8	Certificate of Reporter	15



## P-R-O-C-E-E-D-I-N-G-S

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CHAIRMAN LOCKYER: Ms. Sharpless, if you'll come d. There is a quorum present.

Let me begin with as good an apology as I can muster here. It's been a horrible day. I guess it's a horrible week and a terrible month.

SENATOR BEVERLY: Not too good a year, either.

[Laughter.]

CHAIRMAN LOCKYER: We've been very --

MS. SHARPLESS: As you know, Senator, I've been here.

CHAIRMAN LOCKYER: I know.

MS. SHARPLESS: I've done this, and I know how it is.

CHAIRMAN LOCKYER: I apologize. I just didn't know what else to do. There were too many other fires burning that needed immediate attention.

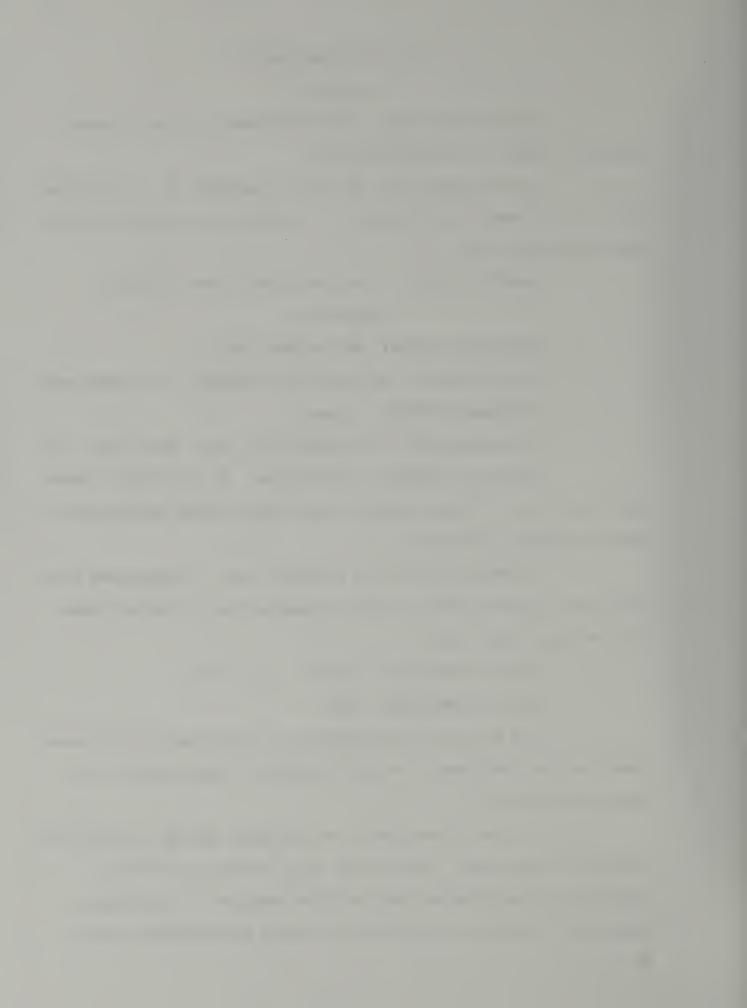
I sometimes feel, in a modest way, I understand the Governor's problems when he has 26 emergencies in three years that he has to deal with.

Senator Rosenthal, why don't you start.

SENATOR ROSENTHAL: Yes.

It's my honor and pleasure to introduce to the Rules Committee Jan Sharpless, who the Governor's appointed to the Energy Commission.

It's not often that I've had good things to say about Governor's appointees. Most often I've joined you during confirmation hearings to question the nominees to the Energy Commission, but Jan, in my opinion, is an exceptional person.



So, it's an exception to the rule that I've established.

Energy and Public Utilities Committee, I've had opportunities to work closely with Jan during her tenure as both Secretary of Environmental Affairs, and particularly as Chairwoman of the ARB. During that period, she's been a strong and consistent advocate for the environment. As part of her efforts to protect the environment, she's been a supporter of the clean fuels programs and the energy efficiency programs, which combine sound energy and environmental policies.

Jan has a proven record that she's capable of contributing to California's energy future, and in this case, ARB's loss is the Energy Commission's gain.

I respectfully urge this Committee to support Jan's confirmation, and I appreciate the opportunity to make this presentation.

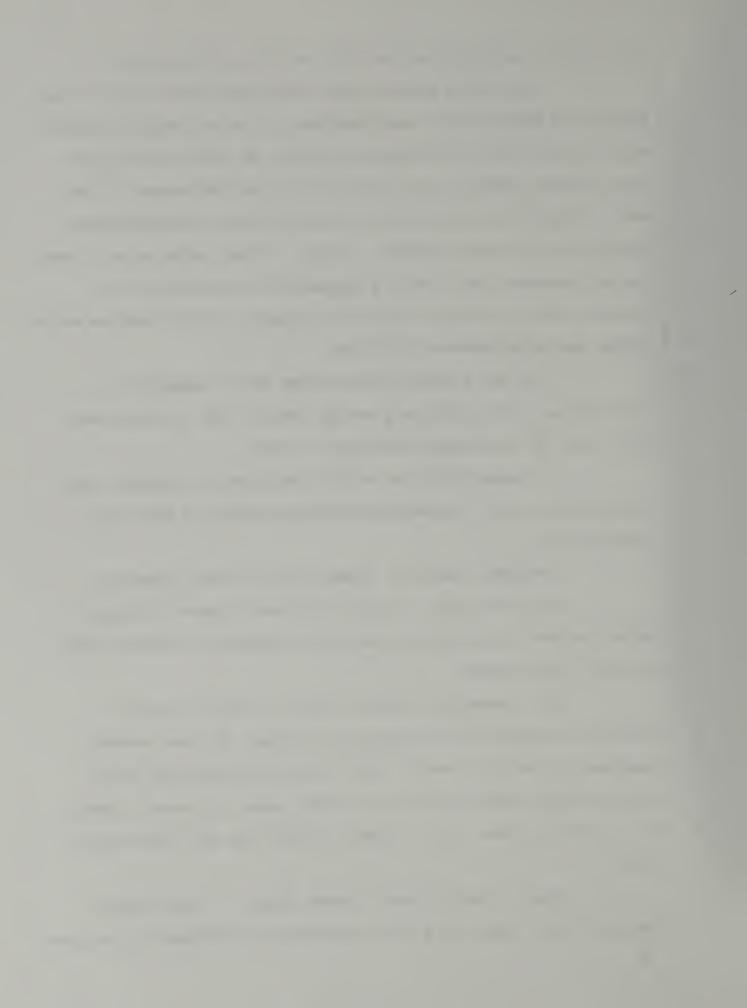
CHAIRMAN LOCKYER: Thank you very much, Senator.

Ms. Sharpless, I think you have a piece of paper.

Maybe you want to begin with whatever comments or observations
you may wish to make.

MS. SHARPLESS: Well, I want to thank Senator
Rosenthal, certainly, for those kind words. We have worked
together in the past, and I think that the bipartisan effort
that we've been able to forge in these areas has been a benefit
to the entire state. So, I wish to thank him for those kind
words.

What I have to say is very short. I just want to indicate that I feel it's a real honor and privilege to be given



the opportunity to be able to serve on the Energy Commission, and if confirmed, I look forward to meeting the challenges that face California's energy future.

My short time there, I've noticed that, like many other areas in this state, the energy area is faced with many of the same problems: securing and providing reliable and affordable sources of energy to a growing population; providing an atmosphere that allows California businesses to be competitive; and to assure the cost-effective supplies are available, while maintaining a healthy environment.

These areas will, as always, require our best efforts as we continue to develop and to implement the creative solutions required.

Because of my background and experience in areas that bridge both energy and the environment, I believe I can make an important contribution and would like very much the opportunity to do so.

Finally, just a personal note, I am a native

Californian. I was born and educated here. This is my place,

my home, and it's the place that has given me these

opportunities. Consequently, my roots run deep, as does my

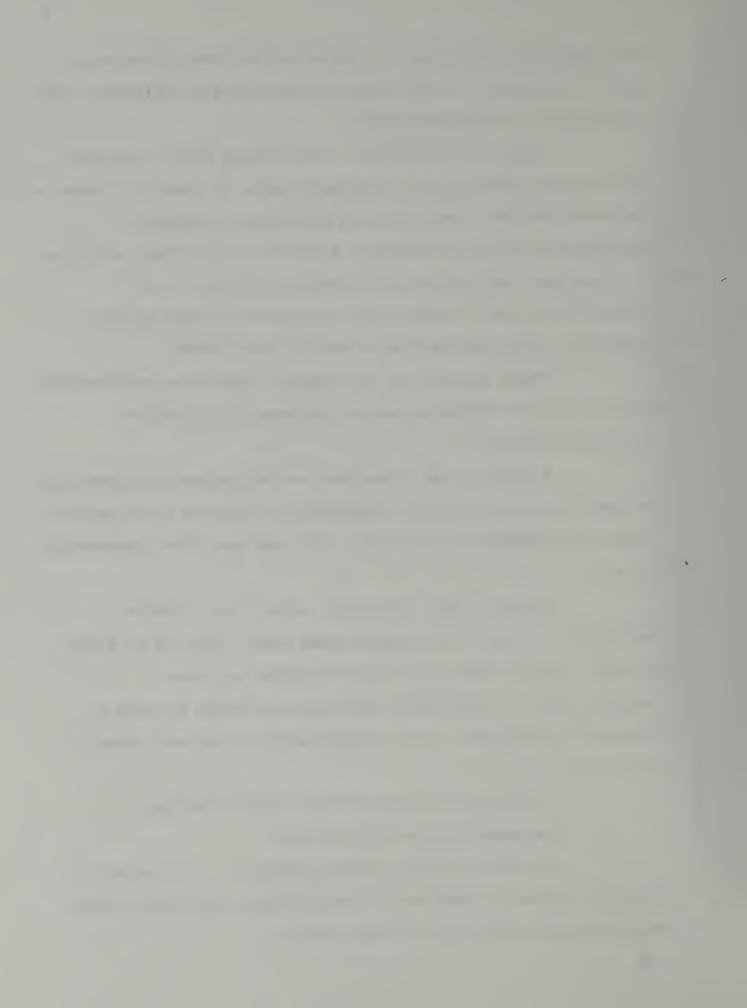
desire to do whatever I can to contribute to the well being of

this state.

I wish to thank you for your consideration.

CHAIRMAN LOCKYER: Thank you.

Did anyone wish to make a comment? I'll certainly entertain those, if members of the audience, other than Senator Rosenthal, who, of course, already has.



I'll ask if Members have questions.

I'll begin, if I may, just for your thoughts and observations about reorganization, with as much candor as is appropriate for a gubernatorial appointee. Maybe an approach would be your thoughts about the strengths and weaknesses of each of the current structures and systems, and what consolidations or changes might produce something better and why?

MS. SHARPLESS: Good. Well, obviously, you've hit on the hot topic in the energy area, and certainly it's been a top priority by agencies, and private sector, and end users that have anything to do with the world of electricity.

The issue of bringing more competition to the market, I think, has started way before the debate that we see today. It's been -- being brought to us partially by changes in the federal law, and partially by improvements in technology. And because of these two things, I think competition has been on its way for sometime.

But, of course, the problem is, the devil's in the details. The big debate these days is exactly what are the proposals, what do they mean, where will they take California? And there's a variety of very substantive issues that must be dealt with, including what will the industries that are currently monopolies look like when we get through with the restructuring? Will they be integrated; will they be broken apart; will they be service agencies; will they be selling commodities. There's the issue of stranded investment, and who will pay. There's an issue of who's going to control the



distribution and control of the transmission lines. So, there's a number of very substantive issues, along with and including government's role.

I think the efforts that we've been seeing have certainly generated a lot of momentum of discussion in this area. The Energy Commission, as you may or may not be aware, has been involved in the PUC process and has put comment out. Our role in that process has been trying to clarify the issues, to identify some of the problems that we see, and to suggest some remedies.

The suggesting of the remedies at this point have basically been focused on what is it that we're trying to accomplish? And that is, is it the reduction of rates, the reduction of bills, bringing consumers a greater selection of services at more competitive prices, making the system more, as the economists like to call it, economically efficient, which is something we really support.

A lot of talk right now is over pooling; pooling of resource so that an independent, or some type of organization, will be able to determine how to deal with the distribution and access to transportation -- rather, excuse me, transmission lines. So, we're very much involved in that.

We believe --

CHAIRMAN LOCKYER: Are your thoughts reflected in the comments at the PUC?

MS. SHARPLESS: Yes, they are very much so, and very actively involved. We've been concerned about the progress that's been made in the State of California for energy



efficiency, for energy diversification, and for technology development. With all those public goods, societal goals, the concern is what happens under a competitive scenario with those programs.

CHAIRMAN LOCKYER: And you're worried about what happens essentially to those activities that have received some subsidy under the current system through ratepayers?

MS. SHARPLESS: They have been, yes. The rates do reflect programs that have enhanced and encouraged energy efficiency.

On the other side of the equation, you have to look at the benefits of the program. Those programs, for the most part, have benefitted the ratepayers. For instance, energy efficiency has benefitted the ratepayer by avoiding additional construction of unnecessary power plants. That is a savings. Some of those things happened more short-term; some of those things happened more long-term.

Certainly in the area of research and development,

California leads the way in research and development. That's

allowed us to diversify our system. Back in the '70s, we were

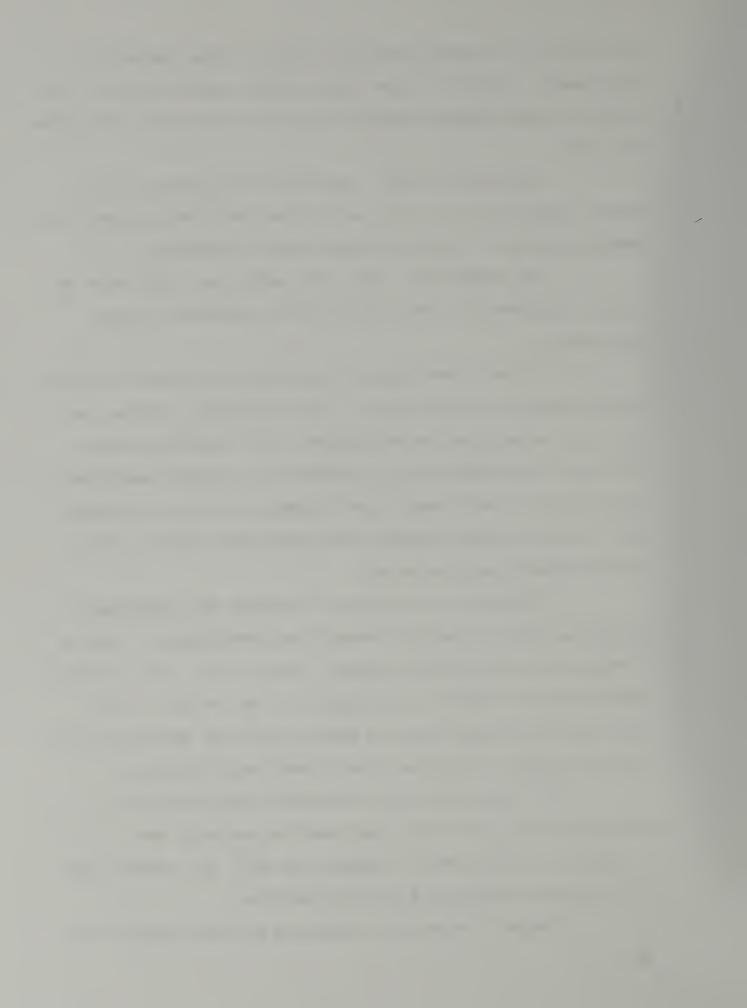
dependent by 33 percent on foreign oil. We are now -- the

structure in California now is about 90 percent from California

and other states, 10 percent from Canada and Indonesia.

So, the technology development has allowed for diversification, and it has increased the security and reliability of our system. Someone has paid, but someone has also received the benefits of those programs.

Under a competitive scenario, we have to decide not



to jettison those objectives, which I think have proven to be very --

CHAIRMAN LOCKYER: Restate those? You had technology development and --

MS. SHARPLESS: We had energy efficiency. We've had technology development and energy diversification.

Energy diversification ties back into energy efficiency and technology development, because they often support one another.

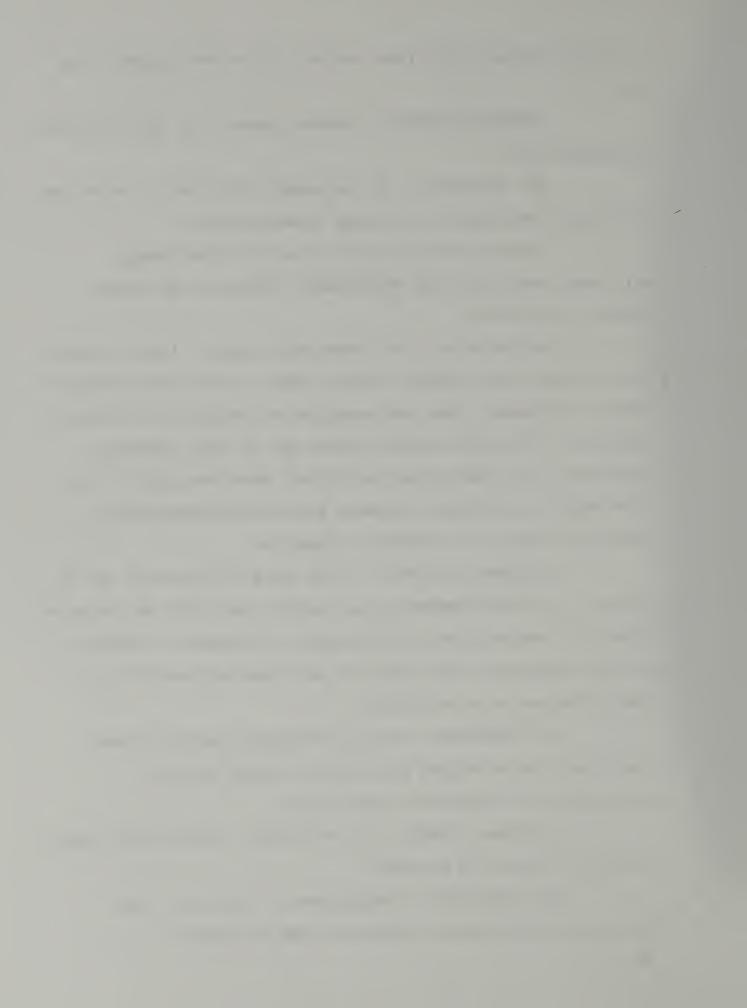
But those are the three major goals. And of course, not to forget, and include the fact that the law also provides that environmental costs and benefits be factored into resource planning. And that's another reason why so many renewable resources, and cogeneration facilities, have been able to be sited here in California, because they are environmentally preferable from an air quality standpoint.

CHAIRMAN LOCKYER: Of the tasks that someone has to address -- the development of new energy, the shift to the more competitive marketplace, the planning, conservation efforts -- are there functions there that are more appropriately PUC or Energy Commission in your mind?

MS. SHARPLESS: Well, the Energy Commission has always been the principle planning and policy making organization for statewide energy policy.

CHAIRMAN LOCKYER: Do you think it should stay there, or should it shift to the PUC?

MS. SHARPLESS: Judging from -- you know, just looking at the different mandates of the different



organizations, and how they're set up, obviously the CEC was set up to do that very task. And I think that the history, 25-year history, has proven that it has done that job very well.

The PUC really has a multitude of tasks, and electricity regulation is only one. And it really doesn't look at, you know, the broad range policy. And energy is bigger than just electricity. It involves transportation; it involves fuel supply and demand; it involves electricity, of course; it involves natural gas resources. So, it's really the bigger energy pie.

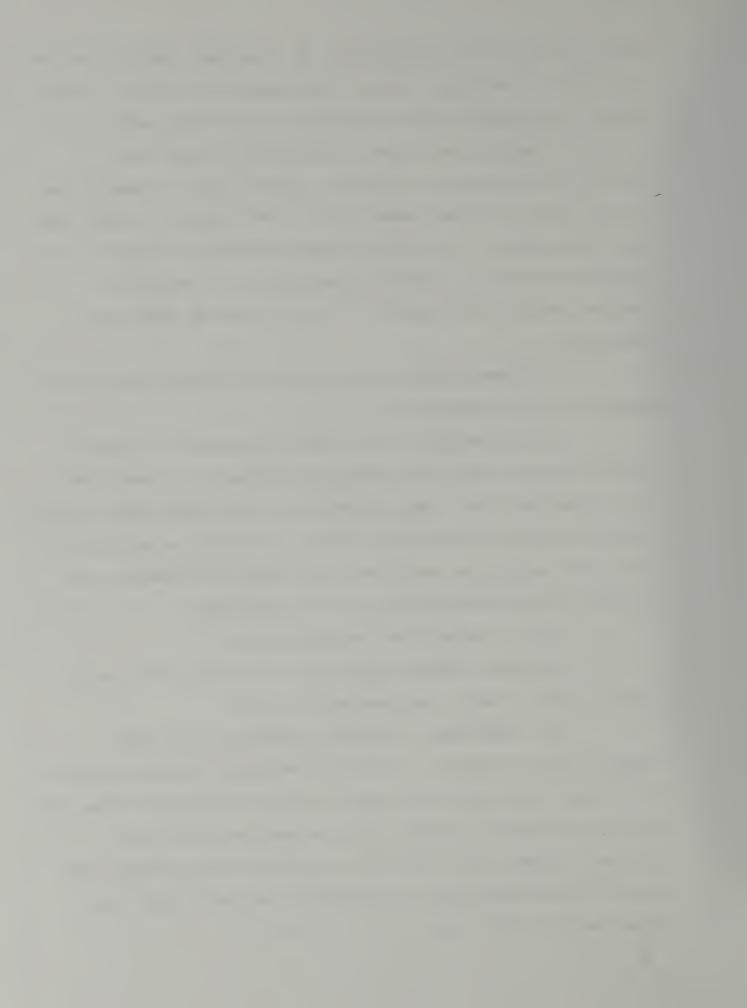
CHAIRMAN LOCKYER: So you would obviously argue that separateness is appropriate.

MS. SHARPLESS: Yes, under -- you know, we have to see what happens under the competition scenario. I would say yes to that question. What government's roles, how they will be redefined under a competitive scenario, I think, is going to be one of the issues that definitely this body and those who are currently under discussion will need to consider.

But in terms of an overall energy --

CHAIRMAN LOCKYER: What are the choices that we're going to have to make, the government's role?

MS. SHARPLESS: I think it depends on how the restructuring is defined. I think it depends on what happens to the current utilities; what they look like; what their roles are going to be; whether there's going to continue to be core service. There's just a variety of questions and answers that have to be addressed that will then spin off as to what the government role will be.



I don't mean to be evasive, but it's kind of a difficult question to answer without knowing what the structure's going to look like.

CHAIRMAN LOCKYER: And that's really more of a PUC venue?

MS. SHARPLESS: No, because the PUC, as you know, only regulates investor-owned utilities. It doesn't regulate the municipalities. Its proposal currently is only directed at investor-owned utilities.

Thirty percent of the electricity out there is supplied by municipalities. So, municipalities have to be brought into this proposal right now, and that is not under the PUC purview.

CHAIRMAN LOCKYER: That's where the Energy Commission comes in, or whom?

MS. SHARPLESS: That's where we all come in, I think.

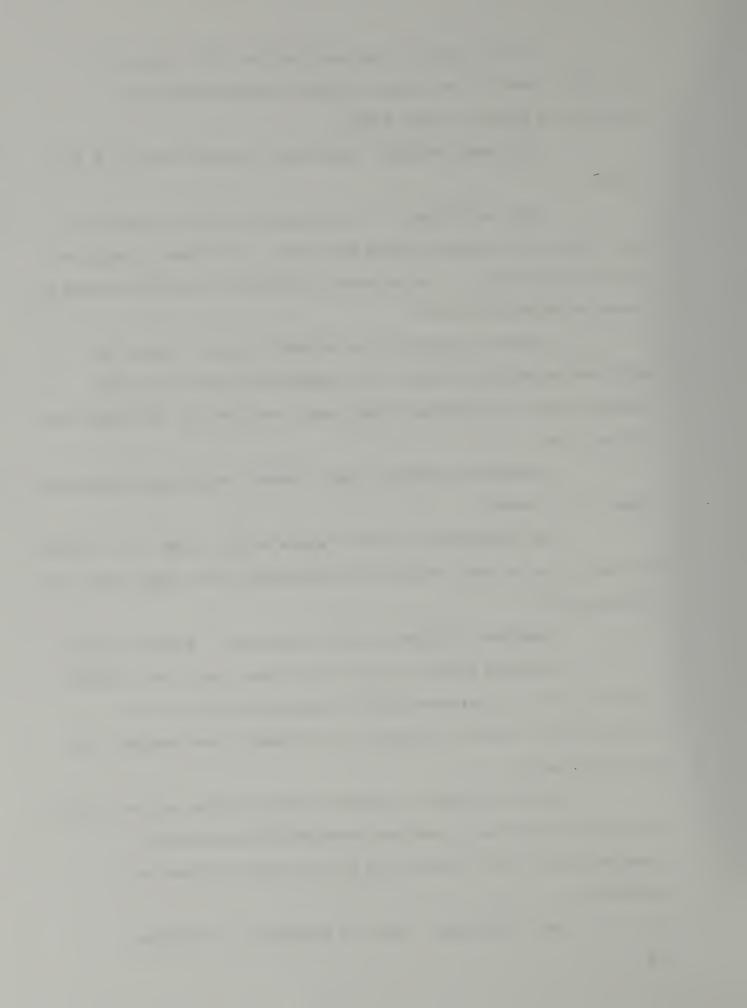
The table has to have everybody represented, and right now, not everybody is.

CHAIRMAN LOCKYER: Other questions? Senator Ayala.

SENATOR AYALA: As you well know, state and federal laws call for an increased use of alternative fuels for transportation, such as methanol and ethanol, and natural gas, and electricity.

What problems or barriers stand in the way of a shift to a more economically and environmentally sustainable transportation fuel future, and how can the barriers be overcome?

MS. SHARPLESS: This is barriers to bringing



alternative fuels into fleets?

SENATOR AYALA: Promote and increase the use of these alternatives for better clean air.

MS. SHARPLESS: In fleets? Is this directed at how do you do it in fleets?

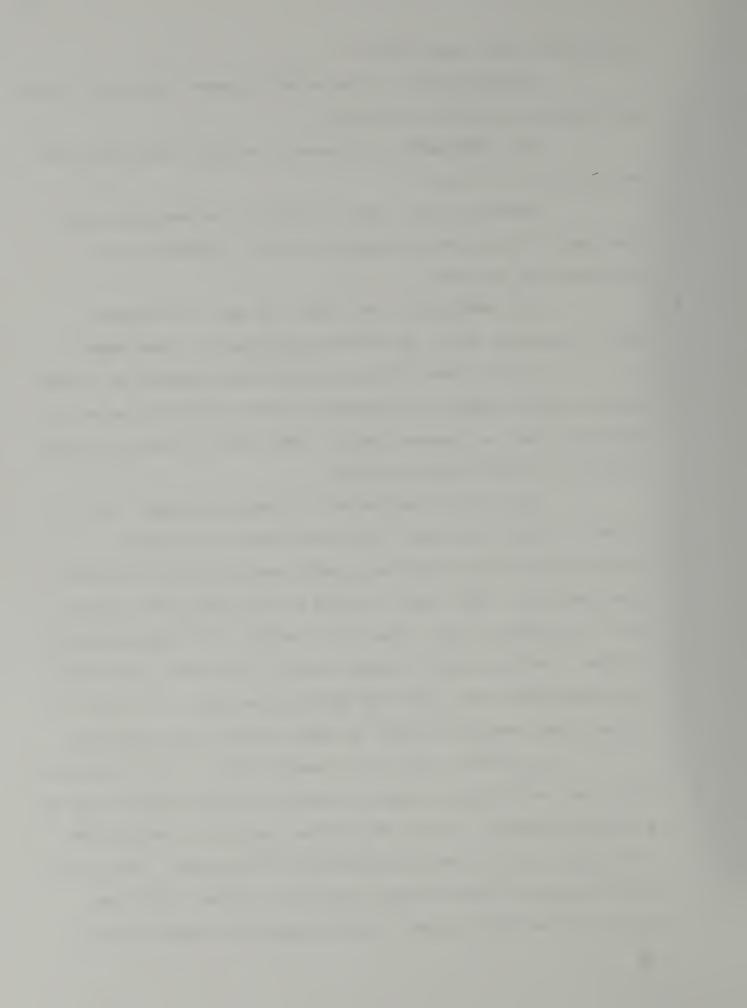
SENATOR AYALA: What's standing between attaining that goal of using more alternative fuels, and how do we overcome that barrier?

MS. SHARPLESS: Yes, well, as you know Senator, that's something that I've worked on for quite a few years.

I think that if you look at fleets, there is -- some people say that there is an easier, that's an easier market to penetrate than the general public, when you're trying to bring alternative fuels into the market.

One of the problems with alternative fuels, of course, is the fuel supply. And until there is a more diversified fueling system out there, people naturally become concerned about where they're going to buy their fuel and how much it's going to cost. And it's a supply and demand kind of problem. Until you get a larger supply, the demand, you know, the demand means that costs are going to be high. You need to increase your demand in order to make it more cost-effective.

So, that's one of the reasons why, in the alternative fuel area, people have looked at fleets, because they're sort of a captured market. You can do central fueling. The distance that people drive is more constrained and confined. And as you build a greater demand through the market system, then the fueling system will follow, and then you'll be able to bring



more alternatively fueled vehicles into a larger market.

But it really has been the chicken and the egg, seriously. That it's very difficult to bring alternative fueled vehicles in if there's not an adequate supply out there. And of course, without an adequate supply, it means that your costs are going to be high, and then you're competing an already established conventional fuel. And people who are in business, obviously, are concerned about cutting margin and making profit. So, that becomes a difficulty.

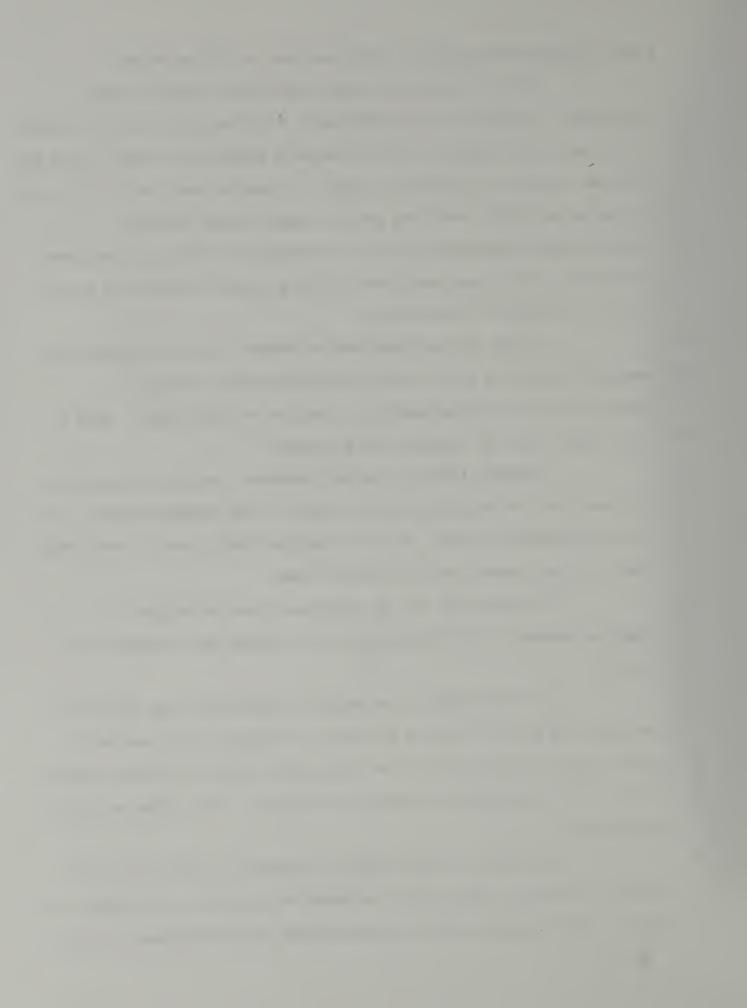
I was on the President's Federal Fleet Program, and was back there as a California representative, trying to overcome some of those barriers that you've mentioned. And I think that they're making slow progress.

SENATOR AYALA: Are we premature because of lack of information, or education on the part of the general public, to view alternative fuels? A lot of people really don't know what they are and where they can obtain them.

Is that part of the problem, that we've got to somewhat educate the driving public to these new alternative fuels?

MS. SHARPLESS: The kind of questions that you and I ask when we go in to buy a vehicle, of course, is: how much added cost is this going to be; how much more is the fuel going to be; will I be able to resell my vehicle. It's kind of basic questions.

The cost of the vehicle, depending on what type of fuel it's using, there is an incremental increase, of course, in cost. And if people are concerned about not being able to find



the fuel, or if they can find the fuel, it's going to be a lot more expensive, it becomes a market barrier. It becomes a detriment.

So, one of the ways that you do that is, you take it to the niche where you think that it has the greatest practicability, and then try to build the supply.

I think eventually there are niche markets here, and
I think eventually alternative fuels will find their way into
the market, but it does take time; it does take education.

SENATOR AYALA: When you say "eventually," what are we talking about? Fifteen years?

MS. SHARPLESS: No, if you look at the federal fleet, if you look at the energy program, the federal energy program, the Congress and then the President accelerated that timeframe, you're looking at -- I can't give you the percentages -- but exact percentages were laid out in that legislation, in that statute, and by the President's Executive Order to be met by the federal government, and to be met by states. So, you will be seeing greater penetration.

SENATOR AYALA: I don't see a mass movement on the part of the driving public to go to these kind of fuels yet.

There's one there, but not much interest so far.

MS. SHARPLESS: Well, one of the things that happened is that we established a fuel neutrality policy when we developed the low emission vehicle program. And by doing that, we didn't designate what fuel would be the winner.

Obviously, the petroleum companies have come forth with a reformulated gas that, in combination with cleaner



technologies, have been able to come in and compete with those alternative fuels.

So, it hasn't been as fast as some people originally thought it would happen when we adopted the LEV program, but I definitely think that there's going to -- natural gas has an obvious niche market, and there's going to be a great penetration of natural gas vehicles. There will continue to be some methanol vehicles, although not as great a penetration as we thought originally. I think natural gas is going to -- you're going to see a lot of that, though, coming into the fleets, and, of course, electricity where it's appropriate.

SENATOR AYALA: Thank you very much.

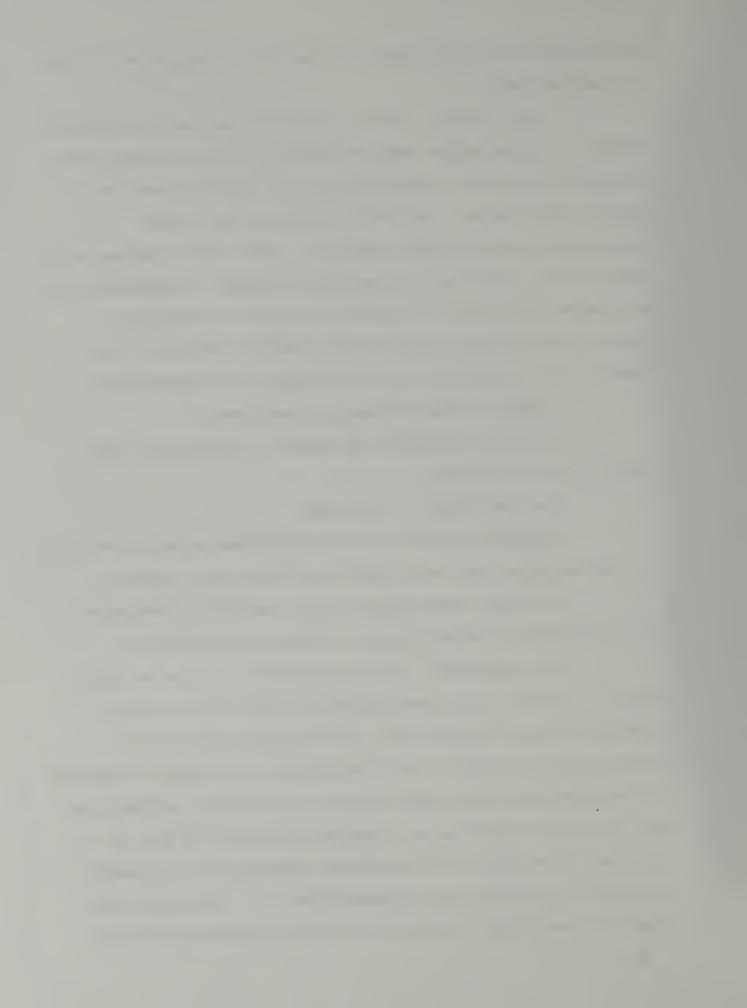
CHAIRMAN LOCKYER: We heard a lot about the fuel neutral policy on Monday.

MS. SHARPLESS: I was here.

CHAIRMAN LOCKYER: You've mentioned alternative fuels and technologies that would impact air pollution problems.

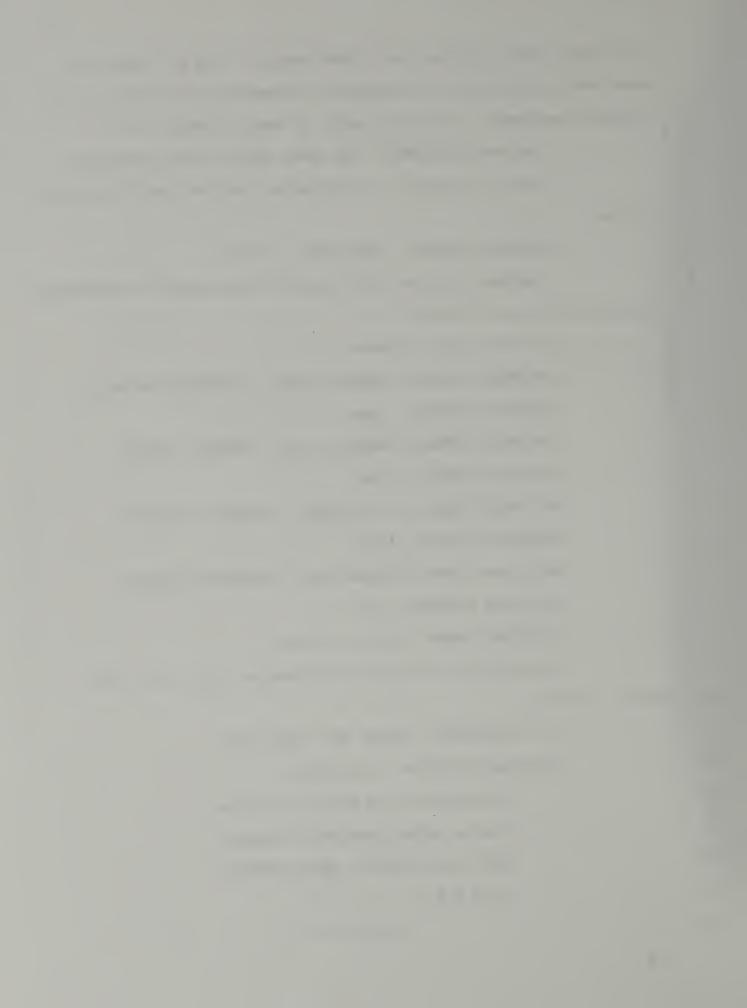
Is there anything else that the Energy Commission could or should consider doing to address air pollution?

MS. SHARPLESS: The law requires, of course, this agency to include environmental impacts into its resource planning, so that is very much a part of what the Energy Commission does, both in the electricity area, where we identify the environmental costs and benefits of different technologies and incorporate them in our resource planning, and also we're very much involved in the technology development of renewable resources: biomass, wind, cogeneration. So, that very much supports that effort, as well as on the transportation side.



1 We're very much involved and cooperate with the air quality 2 agencies on research and technology demonstration projects for 3 alternative fuels. So, we've sort of been through that. CHAIRMAN LOCKYER: Are there additional questions? 5 Senator Craven, I'd recognize you for a motion on the 6 matter. SENATOR CRAVEN: Very good, I move. 8 CHAIRMAN LOCKYER: All right, the motion to recommend 9 confirmation to the Senate. 10 Call the roll, please. 11 SECRETARY WEBB: Senator Ayala. Senator Beverly. 12 SENATOR BEVERLY: Aye. 13 SECRETARY WEBB: Beverly Aye. Senator Petris. 14 SENATOR PETRIS: Aye. 15 SECRETARY WEBB: Petris Aye. Senator Craven. 16 SENATOR CRAVEN: Aye. 17 SECRETARY WEBB: Craven Aye. Senator Lockyer. 18 CHAIRMAN LOCKYER: Aye. 19 SECRETARY WEBB: Four to zero. 20 We might put it on call so Senator Ayala can vote 21 when he returns. 22 MS. SHARPLESS: Thank you very much. 23 CHAIRMAN LOCKYER: Good luck. 24 [Thereupon this portion of the 25 Senate Rules Committee hearing 26 was terminated at approximately 27 1:00 P.M.]

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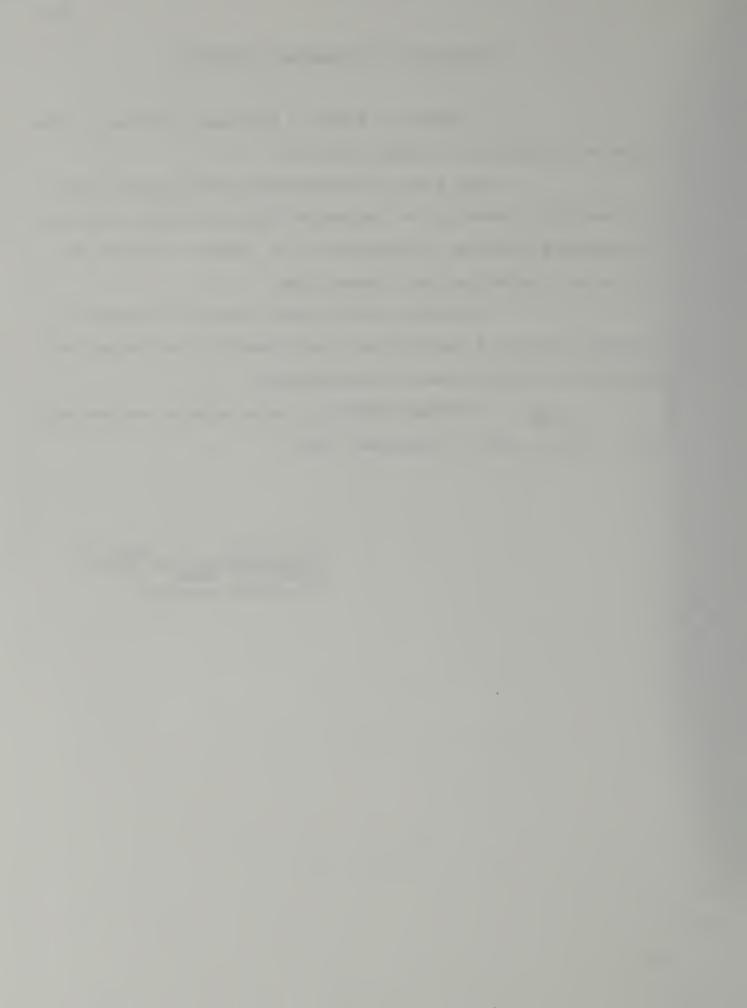
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

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EVELYN J. MZAK (
Shorthand Reporter





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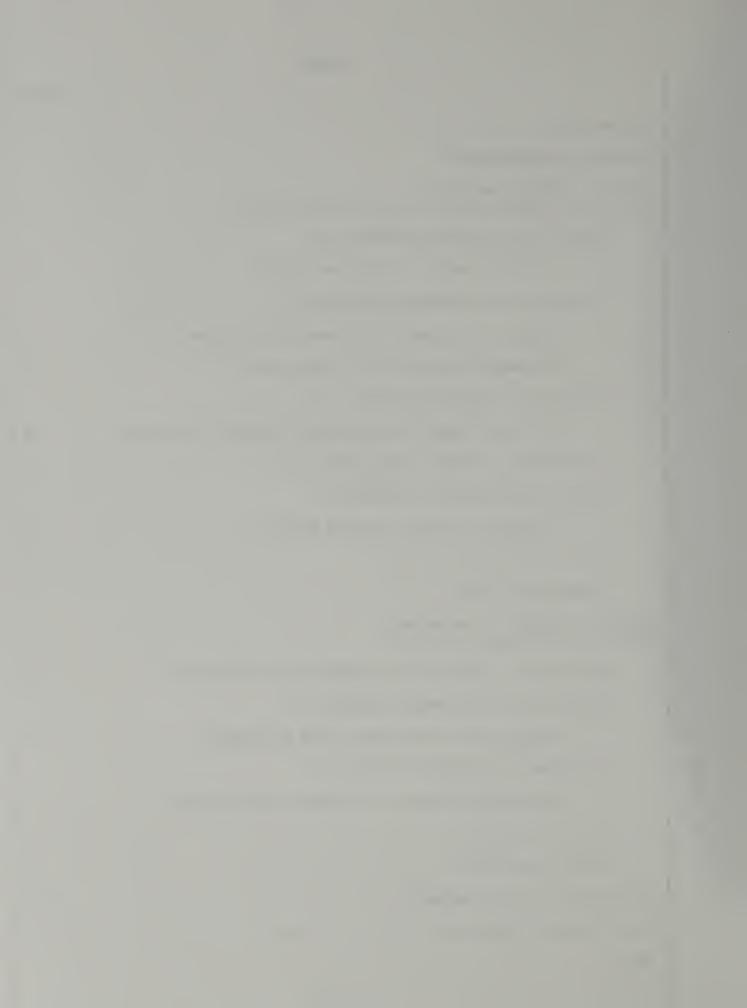


1	APPEARANCES
2	MEMBERS PRESENT
3	SENATOR WILLIAM LOCKYER, Chair
4	SENATOR RUBEN AYALA
5	SENATOR ROBERT BEVERLY
6	SENATOR JOHN LEWIS
7	SENATOR NICHOLAS PETRIS
8	
9	STAFF PRESENT
.0	CLIFF BERG, Executive Officer
.1	PAT WEBB, Committee Secretary
2	RICK ROLLENS, Consultant on Bill Referrals
3	NANCY MICHEL, Consultant on Governor's Appointments
4	ALSO PRESENT
5	DEAN R. DUNPHY, Secretary Business, Transportation and Housing Agency
7	JOANNE C. KOZBERG, Secretary State and Consumer Services
8	SENATOR DAN BOATWRIGHT
9	
0	
1	
2	
3	
4	
5	



INDEX

	<u>Page</u>
Proceedings	1
Governor's Appointees:	
DEAN R. DUNPHY, Secretary Business, Transportation and Housing Agency	1
Questions by SENATOR PETRIS re:	
CalTrans Move to Eliminate BCDC	1
Questions by CHAIRMAN LOCKYER re:	
Sexual Harassment Problems at CalTrans	5
Contemplated Review of Departmnet	6
Questions by SENATOR PETRIS re:	
Critical Report by Stanford Research Institute	6
Discussion of Time Constraints	10
Questions by SENATOR AYALA re:	
CalTrans Policy on Sound Walls	12
Motion to Confirm	12
Committee Action	13
JOANNE C. KOZBERG, Secretary State and Consumer Services	13
Statement in Support by SENATOR DAN BOATWRIGHT	13
Questions by CHAIRMAN LOCKYER re:	
Dispute over Building Codes Standards	14
Questions by SENATOR PETRIS re:	
California Museum of Science and Industry	15
Motion to Confirm	16
Committee Action	16
Termination of Proceedings	16
Certificate of Reporter	17
	Governor's Appointees:  DEAN R. DUNPHY, Secretary Business, Transportation and Housing Agency  Questions by SENATOR PETRIS re:  CalTrans Move to Eliminate BCDC  Questions by CHAIRMAN LOCKYER re:  Sexual Harassment Problems at CalTrans  Contemplated Review of Department  Questions by SENATOR PETRIS re:  Critical Report by Stanford Research Institute  Discussion of Time Constraints  Questions by SENATOR AYALA re:  CalTrans Policy on Sound Walls  Motion to Confirm  Committee Action  JOANNE C. KOZBERG, Secretary State and Consumer Services  Statement in Support by SENATOR DAN BOATWRIGHT  Questions by CHAIRMAN LOCKYER re:  Dispute over Building Codes Standards  Questions by SENATOR PETRIS re:  California Museum of Science and Industry  Motion to Confirm  Committee Action  Termination of Proceedings



## P-R-O-C-E-E-D-I-N-G-S

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CHAIRMAN LOCKYER: We have two confirmations. First is Mr. Dunphy as Secretary of Business, Transportation and Housing.

I will mention, of course, Senator Lewis wasn't with us at that time, but we did have a hearing and discussion, and a very interesting exchange, including your notes to yourself.

Let me just say thank you for your willingness to reappear briefly. Mostly, I think, we'll ask, unless you would have something else to add to your prior testimony, Mr. Dunphy, we'll ask you to just say hello and ask Members if they have questions or concerns.

MR. DUNPHY: I would consider that my good fortune if we did not review the entire one hour previous testimony, thank you.

CHAIRMAN LOCKYER: Any Members on this? Senator Petris.

SENATOR PETRIS: There have been a couple new developments since you were here before us last, and they affect me, so I thought I'd ask you some questions.

I was startled to read in the press the other day that CalTrans is moving to eliminate BCDC, and I've been targeted to carry the bill to do that.

Now, that's either a nasty joke, or somebody doesn't have a good sense of humor, since I was the author of BCDC, and I feel it's an excellent agency. I have no intention of carrying that bill, and if it's introduced, I intend to oppose



it very strongly.

What is CalTrans' problem with BCDC? Can you speak to that? I know you're not directly at CalTrans, but you're the Super Agency Director.

MR. DUNPHY: I think that the subject first is in a proposal stage, which being a proposal between the Agency and the Governor, is not one that I can comment on specifically.

However, I would be happy to --

SENATOR PETRIS: Do you mean they bypassed you and went directly to the Governor?

MR. DUNPHY: No, it came through my office, but because of the nature of the relationship between the Agency and the Governor's Office in a proposal stage, I'm not -- there is no policy, so I'm not able to comment on it.

But I would be so bold as to volunteer the thought that BCDC, authored by yourself, performed a valuable function in the saving of the Bay tidelands, the development of a plan which was adopted, I believe, in '69, which guided the way in which the Bay would be developed, saving it from landfill, quality of water, et cetera.

But as we go through our life in government and in private enterprise, we find that the overlapping and increasing layers of what you might refer to as bureaucracies -- of the local government, state government, and regional government having to pass on various issues -- it tends to be a burdensome problem to the accomplishment of objectives, and taking a great deal of time to indeed do things which could be done more quickly by local government and/or, in this case, by the



California Coastal Commission.

So, I think we're all conscious, particularly as our economy becomes more strained, to endeavor to reduce the layering of approvals and their processes. And I think that that is probably at the heart of the suggestion.

SENATOR PETRIS: Well, the way I see it, that has some flaws in it.

First of all, BCDC is probably the most prominent of all state agencies that require local government representation on it. There are members of boards of supervisors serving on it by virtue of the fact that they have a local office, and members of city councils. It's a very large body. It includes Governor's appointees, but it also includes these other people for that very purpose.

It's also the first agency in the history, that I know of, in the state that requires them to act promptly on applications. If they don't act within 30 days, whatever application is involved is deemed to be approved. So, they can't just sit around and stall it like so many other agencies do, either purposefully or through inefficiency, and so forth.

So, that's the reason I'm expressing a concern. It's not only the fact that I was the author. I'm proud of that, but it's the fact that I think there is still continuing need to do that and to keep local government directly involved, rather than just having a passive view of the thing.

Now, the only problem of the kind you mentioned that was covered in the press account, there may be others, maybe you can enlighten us on what the other problems are with the fly



over on Cypress along the east shore of the freeway, connecting up to San Francisco. I strongly supported CalTrans in that, and I opposed BCDC. And I say that because I have maintained a fairly independent outlook. When other issues arise, usually I find myself coming down on the side of BCDC, especially on the conservation issues. On that one, I strongly supported CalTrans.

I would think, having won that fight, they could walk away from it and not turn around and ask for the abolition of the agency. That smacks of a little bit of peevishness on the part of CalTrans.

Are there other major obstacles in the way of CalTrans that have been presented by BCDC, or is it just the layering?

MR. DUNPHY: I think it's basically the layering, and that issue, as you know, was a very contentious one, and it had a great deal to do with getting the Cypress Freeway underway, it being a very early first contract that was needed. And I would probably agree that there was a certain amount of angst associated with that.

CHAIRMAN LOCKYER: I should point out, Senator, this Committee's appointee to BCDC voted against us, those of us who urged him. Perhaps we ought to review that, and some of the blame falls on our own appointees.

SENATOR PETRIS: Could be. I think we ought to revisit that.

I have some other areas I wanted to ask about.

CHAIRMAN LOCKYER: If I may --



SENATOR PETRIS: Yes, you go ahead.

CHAIRMAN LOCKYER: There was a recent press discussion, legislative hearings, and considerable turmoil associated with sexual harassment problems alleged in CalTrans. I guess there's been investigations, claims of white-wash, and cover-up, and so on.

What would you contemplate now, if anything, to maintain some objective and impartial, fair evaluation of the contentions that there are problems?

MR. DUNPHY: Well, I suppose there are two issues. First, there is the District Nine, which is Bishop, which caused the attention, press attention.

And separating that for the moment, CalTrans has a fairly energetic program of training. They have spent several million dollars on training and sensitizing folks to a changing culture and environment that is necessary and appropriate. I think they are doing a reasonable job in that regard.

The issue, then, turning to district Nine, is one that has a history of several years. As you may recall from some of the testimony, one of the witnesses, or one of the persons questioned had to deal with an issue that was a number of years old. And I strongly suspect that historically, as a department changes, there are 75 male percent in CalTrans, females 25 percent. But as the evolution of the effort to make it more accommodating to all persons of all types and sexes, et cetera, that you're going to have isolated instances of people who have not paid attention to the training. And where you have 18,000 persons employed by the department, it's perhaps not



unexpected you're going to have a renegade that's going to give you a problem.

But their training program is fairly discreet and, I think, effective. So that what we have to do is make sure that it maintains its effectiveness and to eliminate these other activities.

CHAIRMAN LOCKYER: Do you contemplate any Agency level review, investigation, or action with respect to the District Nine problems?

MR. DUNPHY: I, as the Secretary, will demand of the Director a full explanation of what is to transpire as a result of that activity.

CHAIRMAN LOCKYER: Has he offered that yet, the Director?

MR. DUNPHY: Not to my knowledge, sir.

CHAIRMAN LOCKYER: There's some suggestion that maybe the complaint has been filed before the federal EEOC, and that they might be an independent reviewer. That seems sensible to me. I hope if there's anything the Agency needs to do in the way of assenting or permitting that re-examination, that might be a way to do it.

MR. DUNPHY: They'll have our full cooperation and encouragement.

CHAIRMAN LOCKYER: Senator Petris.

SENATOR PETRIS: Thank you, Mr. Chairman.

Now that we've covered CalTrans' desire to abolish BCDC, I find the report here from the Stanford Research

Institute International that says, among other things, that



CalTrans, quote:

"... cannot be managed effectively with

the present lack of policy direction, lack

of flexibility, lack of performance

measures, and ineffective system of reward

and disciplinary procedures."

That's a rather severe criticism of management style at CalTrans. So, we're looking for answers to that.

I wonder if you're familiar with that report? It came out this year.

MR. DUNPHY: Yes, I am.

SENATOR PETRIS: It also recommended a constitutional amendment to separate some of the functions out of the overall Agency, and to increase efficiency, put them somewhere else; separate them from Business, Transportation.

I'd like to have your reaction, number one, whether you agree with some of the criticism, and what plans you have for correcting the situation if you agree that they're valid. If not, we'll go on to the next question.

MR. DUNPHY: Well, I would -- I received that report on behalf of the Governor, I believe it was in February of this year.

The Director of CalTrans, General Van Loben Sels, received it from me, and had agreed, even before the report was made public and finalized, that significant corrections were needed in the Department relative to performance, et cetera.

Relative to the SRI recommendation that Transportation be made a separate agency, and the other



regulatory activities put into either another agency or distributed, I personally disagree with that recommendation, but I can also go further and try to identify, if I can, the origin.

At the time that that report was both requested and being developed, I was a member of the California Transportation Commission. At that time, the Agency included Trade and Commerce in the beginning of my term. It was a very broad-based Agency with many activities, such to the extent that Transportation was not given the interest and attention that I believe I am bringing to the Agency.

Since my arrival, I was successful in having the administration approve the appointment of an Under-Secretary so that among the various agencies I have, I have the only two Under-Secretaries of agencies, one of which is the Under-Secretary for Transportation. And I have dramatically increased the attention and oversight of CalTrans by virtue of that activity.

Because of my own prior interest, I served as
Chairman of the Board of the San Diego Transit Corporation for
five or six years prior to joining the California Transportation
Commission, and prior to that I was a building contractor,
commercial building contractor in San Diego. So, I have a
transit background. I have an interest in the economic
potential of the highway system, and because of my service on
the Transportation Commission, I understand the importance of
multi-modal systems, transit, throughout the state. That is
highways, rails, short urban commuter, inner city, et cetera,
and the development of the ports.



1 2

So, I believe that I'm able to bring a focused attention to transportation, while at the same time within the Agency, I have ten or eleven other departments that are basically regulatory in nature -- the Department of Corporations, S&L, State Banking, et cetera -- which are handled by the Under-Secretary. And because they are not quite the lighting rod of some of the other activities, I believe that I've been able to express a competence in that management oversight.

The alternative would be to set up either a separate agency or find another home for the other regulatory departments. I just believe that the Governor is well served, and the Legislature is well served, by my managing those in one agency.

So, I do disagree with that.

Now, not trying to avoid your other question about the need for reform, one of the cards that I carry with me, that Senator Lockyer refers to frequently, has to do with a reform of CalTrans. Several months ago, when you asked me what my most important objective is, I said that it is indeed the reformation and/or transformation of CalTrans in making it a more user-friendly, efficient, smaller organization that can perform under more limited, efficient circumstances.

As you're aware, I think we're all aware, of the fact that transportation revenues have been on the decline for a variety of reasons, and yet the need for expanding capacity of highway, and then providing alternative transit by way of rail, commuter rail, et cetera, all of those are growing. So, we have



to be better managers and more efficient.

Because there is not much appetite for increasing revenues through taxes, we have to first attack it through efficiencies, and that Department has to be at the center of that activity. And I am spending a great deal of time on it, and I do want to give General Van Loben Sels credit for having instituted a number of changes already which are improving it.

But I also want to take this moment, however, to recall your first comment about the SRI report, which said that it's important to do a couple of things strategically and structurally that permit the Department to be more effective.

One of those is a constitutional amendment to permit contracting out. The private sector has a great capacity to deliver product, whether it be engineering or constructing, the private sector has been the constructor of freeways, et cetera. But because of court interpretations, which are currently being challenged, the Department has been denied the opportunity to have private sector engineers to design work, and is under an edict now to reduce that amount.

I think that's very important and has far reaching implications for the rest of state government.

CHAIRMAN LOCKYER: Mr. Dunphy and colleagues, I want to remind you that, unlike the normal day when Rules is meeting, and they aren't waiting for us on the Floor, they are waiting now. We can't do anything about that, other than let the appointments die, which is okay with me, but it's not something I'd recommend.

I just want all of you to be aware that we have some



time constraints because we're acting at the same time that Senators are milling around, moving vacancies on the Rules Committee and such.

An update for those that haven't been in front of the television, 40-40 is the current score in the Assembly.

Senator Petris

SENATOR PETRIS: We won't be meeting again on this because we're up against a deadline.

CHAIRMAN LOCKYER: This is it, unless we ask the Governor to withdraw the nomination and resubmit it, or something like that.

SENATOR PETRIS: Is that possible?

CHAIRMAN LOCKYER: It is.

SENATOR PETRIS: I thought there was some legal obstacle to that.

CHAIRMAN LOCKYER: No, he can do it.

SENATOR PETRIS: The problem is, we have a lot of good questions that need to be addressed, I think: earthquake repairs, and other things which are mostly CalTrans.

Maybe we should ask CalTrans to come in as well.

I don't feel comfortable bringing out this criticism of CalTrans. There's a building in my district, a beautiful 12-story office building, that has my name on it, and it's a CalTrans building. So, it's difficult for me to give publicity to any criticism of CalTrans' effectiveness and efficiency.

I will tell my colleagues that when that building was dedicated, the CalTrans representatives and the private builder's representative, a big company from L.A., both



1 SECRETARY WEBB: Lewis Aye. Senator Petris. 2 SENATOR PETRIS: Aye. 3 SECRETARY WEBB: Petris Aye. Senator Lockyer. 4 CHAIRMAN LOCKYER: Aye. 5 SECRETARY WEBB: Five to zero. 6 CHAIRMAN LOCKYER: Place the matter on call briefly. 7 Thank you, sir. 8 Ms. Kozberg, welcome back. Did you want to begin 9 with any observations or comments, an update from your previous 10 discussion? 11 MS. KOZBERG: No, in the interest of your time, I'd 12 be very happy to answer your questions directly. 13 CHAIRMAN LOCKYER: Are there questions from Members? 14 Senator Boatwright. 15 SENATOR BOATWRIGHT: Yes, Mr. Chairman, Members. 16 Just very briefly, I have oversight, incidentally, on 17 I would invite you people to come to my Subcommittee 18 4, because I have their budget. I tried to do some of the 19 efficiencies, and they were vetoed. I invite you to come to my 20 subcommittee when it's heard. 21 I am here to speak for Ms. Kozberg because I believe 22 that she's going to bring something to this job, and she has 23 already, and that is a willingness to work with the Legislature. 24 I found in her previous position and in her current position 25 that I believe she wants to follow the law, to do things that 26 are right. 27 I don't always agree with everything that's done, but

as long as they do things according to the law, that's okay with



1 emphasized the fact that this building was brought ahead of 2 schedule and under budget. Whereupon, I replied that that's the 3 This is the dawn of a new era. If you want public 4 projects to come up ahead of time and under budget, you name 5 them after a flaming liberal. 6 [Laughter.] 7 SENATOR PETRIS: I'll withhold any further questions. 8 SENATOR AYALA: I have a short question. 9 Does CalTrans have a policy that pertains to sound 10 walls? 11 MR. DUNPHY: Yes. 12 SENATOR AYALA: Can I have a copy of those policies? 13 MR. DUNPHY: Yes, sir. 14 SENATOR AYALA: Thank you. 15 MR. DUNPHY: We are spending about \$10 million a year 16 on the installation of sound walls, and they are effective. 17 CHAIRMAN LOCKYER: Other comments or questions? 18 Senator Beverly. 19 SENATOR BEVERLY: If you're ready for a motion, I 20 move that we recommend confirmation. 21 CHAIRMAN LOCKYER: The motion is properly before us. 22 Call the roll, please. 23 SECRETARY WEBB: Senator Ayala. 24 SENATOR AYALA: Aye. 25 SECRETARY WEBB: Ayala Aye. Senator Beverly. 26 SENATOR BEVERLY: Aye. 27 SECRETARY WEBB: Beverly Aye. Senator Lewis. 28 SENATOR LEWIS: Aye.



me.

I'm also confident that she recused herself in the matters involving the California Museum of Science and Industry. Senator Petris, myself, Senator Alquist were probably the leading foes as to what has happened down there. I don't agree with what's happened, but I do believe that she has conducted herself honorably, and I would urge her confirmation.

CHAIRMAN LOCKYER: Thank you, Senator.

Questions from Members?

Maybe I could begin with just a quick one.

I remember sort of a correspondence blizzard of various folks that were involved in something that was beyond my expertise, other than recognizing there was some dispute. It had to do with the building codes standards, and different organizations that used to, I guess, for 30 years or something, jointly prepare these codes for the Building Standards Commission.

Has that been worked out? Have you been able to effectuate a meeting between the different --

MS. KOZBERG: We are -- all the parties are meeting on December the 8th, and we are going to try and bring all parties to work together.

CHAIRMAN LOCKYER: Should we vote on December 9th?

Do you feel pretty confident about bringing this off?

MS. KOZBERG: I think so, because there are a number of issues beyond just the publishing of codes that we need to get to, and especially if we're moving into a whole new technology where local government will become in partnership, we



1 all do need to work together. 2 CHAIRMAN LOCKYER: I quess I'm obligated on advice of 3 counsel to indicate that our confirmation votes never have 4 anything to do with your administrative duties or actions. 5 Senator Petris, did you have anything here? 6 SENATOR PETRIS: Yes, I wanted to touch briefly on 7 what Senator Boatwright said. I was one of those who was active 8 in the Museum of Science and Industry. 9 What is the current plan? 10 MS. KOZBERG: Senator, I could have Under-Secretary 11 Ann Sheehan come and speak to you about that. I am recused on 12 that issue. 13 SENATOR PETRIS: Is she here now? 14 MS. KOZBERG: I believe she has a smoq check meeting 15 now. 16 SENATOR PETRIS: On her car or somebody else's? 17 [Laughter.] 18 MS. KOZBERG: On the state program, Senator. 19 SENATOR PETRIS: Can you tell us what her program is 20 with respect to this? 21 MS. KOZBERG: Senator, I'm not knowledgeable about 22 I am recused on the Science and Industry Museum, but I 23 could make sure that the Under-Secretary sees you immediately. 24 SENATOR PETRIS: I think I met with her once before. 25 Is her word the official word? 26 MS. KOZBERG: Senator, I'm not knowledgeable about 27 the Museum of Science and Industry.

That's my problem. I think if you

SENATOR PETRIS:



had been, we may not have the problems we have. 2 Well, okay. 3 CHAIRMAN LOCKYER: Other Members? Senator Beverly. 4 SENATOR BEVERLY: I move we recommend confirmation. 5 CHAIRMAN LOCKYER: All right, we have an appropriate 6 motion made. Call the roll, please. 7 SECRETARY WEBB: Senator Ayala. SENATOR AYALA: Aye. 9 SECRETARY WEBB: Ayala Aye. Senator Beverly. 10 SENATOR BEVERLY: Aye. 11 SECRETARY WEBB: Beverly Aye. Senator Lewis. 12 SENATOR LEWIS: Aye. 13 SECRETARY WEBB: Lewis Aye. Senator Petris. Senator 14 Lockyer. 15 CHAIRMAN LOCKYER: Aye. 16 SECRETARY WEBB: Four to zero. 17 CHAIRMAN LOCKYER: Leave it on call briefly. 18 [Thereupon this portion of the 19 Senate Rules Committee hearing 20 was terminated at approximately 21 1:42 P.M.] 22 --00000--23 24 25

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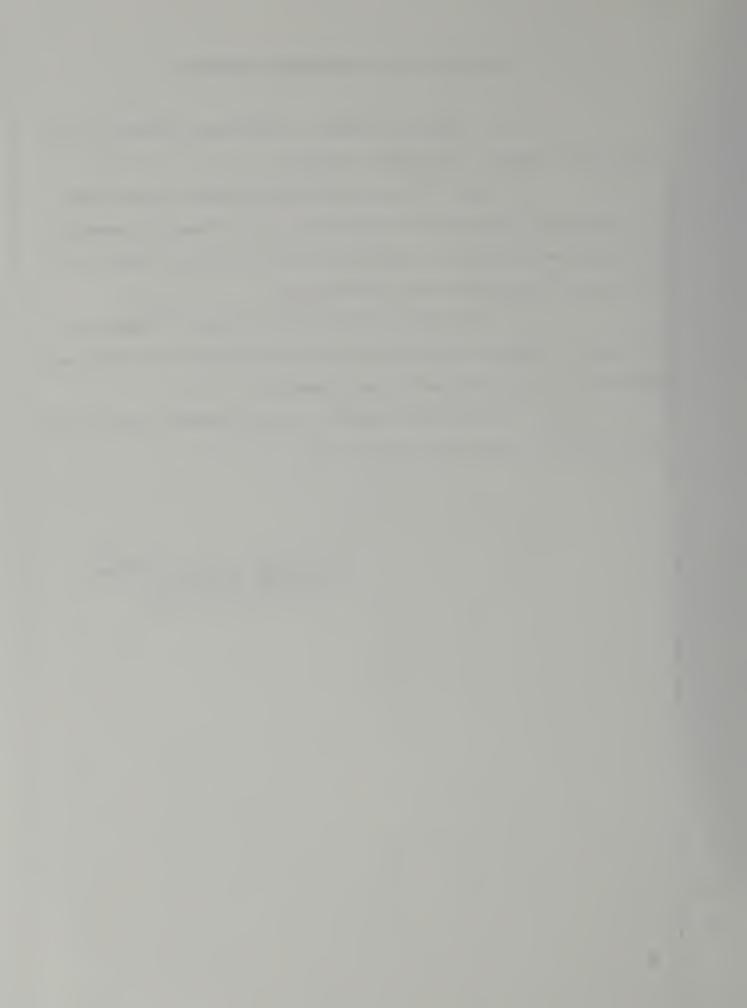
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